



HF  
105  
A47  
R 15  
1902

Harry Turner Newcomb  
Washington, D.C.

CORNELL  
UNIVERSITY  
LIBRARY



FROM



CORNELL UNIVERSITY LIBRARY



3 1924 095 660 878



## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.









“RAILWAY FREIGHT RATES AND POOLING.”

---

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE,

UNITED STATES SENATE,

HAVING UNDER CONSIDERATION THE BILLS (S. 3521) “TO ENLARGE THE JURISDICTION  
AND POWERS OF THE INTERSTATE COMMERCE COMMISSION,” INTRODUCED  
IN THE SENATE FEBRUARY 4, 1902, BY MR. ELKINS; AND (S. 3575)  
“TO AMEND AN ACT ENTITLED ‘AN ACT TO REGULATE  
COMMERCE,’ APPROVED FEBRUARY 4, 1887, AND ALL  
ACTS AMENDATORY THEREOF,” INTRODUCED  
FEBRUARY 5, 1902, BY MR. NELSON.

---

VOLUME I.

---

WASHINGTON:  
GOVERNMENT PRINTING OFFICE.

1902.

HF  
105  
A47  
R15  
1902

57th CONGRESS.

---

INTERSTATE COMMERCE COMMITTEE.

SENATE OF THE UNITED STATES.

STEPHEN B. ELKINS, of West Virginia.  
SHELBY M. CULLOM, of Illinois.  
NELSON W. ALDRICH, of Rhode Island.  
JOHN KEAN, of New Jersey.  
JONATHAN P. DOLLIVER, of Iowa.  
JOSEPH B. FORAKER, of Ohio.  
MOSES E. CLAPP, of Minnesota.  
JOSEPH H. MILLARD, of Nebraska.  
BENJAMIN R. TILLMAN, of South Carolina.  
ANSELM J. McLAURIN, of Mississippi.  
EDWARD W. CARMACK, of Tennessee.  
MURPHY J. FOSTER, of Louisiana.  
THOMAS M. PATTERSON, of Colorado.

II

342450

X

1134800



## TABLE OF CONTENTS.

	Page.
Senate bill 3521 (the Elkins bill) .....	III
Senate bill 3521 (the Elkins bill) with proposed amendments.....	IX
Senate bill 3575 (the Nelson bill) .....	xv
Freight rates on lumber .....	1
Statement of—	
E. M. Adams .....	1-
J. E. Evans.....	9
E. P. Bacon .....	14
List of organizations endorsing Senate bill 3575.....	15
Statement of—	
Bernard A. Eckhart.....	28
Aaron Jones .....	34
George F. Mead.....	38
Power of Congress over interstate commerce .....	47
Additional statement of E. P. Bacon.....	52
Extracts from the press.....	54
Statement of—	
William R. Corwine.....	75
Robert W. Higbie.....	86
Freight rates on lumber .....	88
David Bingham .....	96
Samuel T. Hubbard .....	99
R. S. Lyon .....	99
Charles N. Chadwick.....	103
William H. Chadwick.....	104
Railroad combinations, mileage, etc .....	107
Statement of—	
T. W. Tomlinson.....	121
John D. Kernan .....	124
H. H. Porter.....	133
The Hon. Martin A. Knapp.....	137
Joseph Nimmo, jr.....	140
The political aspects of governmental regulations.....	156
Commissioner Clement's <b>ANALOGY</b> .....	161
Predictions as to exorbitant rates in the future .....	161
The evolution of the American railroad systems.....	162
Petitions, memorials, and resolutions endorsing S. 3521 and S. 3575.....	175

## APPENDIX.

The act to regulate commerce as amended, together with acts supplementary thereto .....	1-28
---	------





## THE ELKINS BILL AS ORIGINALLY INTRODUCED.

[S. 3521, Fifty-seventh Congress, first session.]

**A BILL** To enlarge the jurisdiction and powers of the Interstate Commerce Commission.

1 *Be it enacted by the Senate and House of Representatives of the United States of*  
2 *America in Congress assembled,* That any definite order made by the Interstate  
3 Commerce Commission after hearing and determination had on any petition  
4 hereafter presented pursuant to section thirteen of an act entitled "An act to  
5 regulate commerce," approved February fourth, eighteen hundred and eighty-  
6 seven, declaring any existing rate or rates in said petition complained of, for the  
7 carriage of any given article or articles, person or persons, or any regulation or  
8 practice affecting such rates, to be unjustly discriminative or unreasonable,  
9 and declaring what rate, regulation, or practice affecting such rate for the  
10 future, in substitution, would be just and reasonable, shall become operative  
11 and be observed by the party or parties against whom the same shall be  
12 made, within thirty days after notice; or in case of proceeding for review as  
13 hereinafter provided, then within forty days after notice; but the same may  
14 at any time be modified, suspended, or revoked by the Commission, but shall  
15 in no case continue in force and be obeyed beyond the period of one year  
16 from the day the same becomes originally operative and is observed. If  
17 such substituted rate shall be a joint one, and the carriers parties to that rate  
18 shall be unable to agree upon the apportionment thereof among themselves  
19 within ten days after any such order shall become operative, then the Com-  
20 mission may declare as part of its order what would be a just and reason-  
21 able proportion of such rate to be received by each carrier. Such order  
22 as to its justness, reasonableness, and lawfulness, whether in respect to the rate,  
23 regulation of practice complained of, or that prescribed in substitution therefor,  
24 or the apportionment of a joint rate, or otherwise, shall be reviewable by any  
25 circuit court of the United States for any district through which any portion of  
26 the road of the carrier shall run, to which a petition filed on its equity side shall  
27 be first presented by any party interested. Pending such review the said order  
28 shall be suspended unless upon application to and hearing by said court it shall  
29 be otherwise ordered; said court and the Supreme Court in case of appeal may,  
30 at any time, upon application and notice, suspend or revoke the said order. The  
31 several circuit courts of the United States are hereby invested with full jurisdic-  
32 tion and powers in the premises, including the issuance and pursuit of the neces-  
33 sary process to secure appearance of the parties. The court shall also direct  
34 notice to the Commission of the filing of said petition; whereupon it shall be the  
35 duty of the Commission, within ten days after the receipt thereof, to cause to be filed

1 in said court, duly certified, a complete copy of its entire record, including peti-  
2 tions, answers, testimony, report, and opinion of the Commission, order, and all  
3 other papers whatsoever in connection therewith. The court shall thereupon  
4 proceed to hear the same either upon the petition, record, and testimony returned  
5 by the Commission; or, in its discretion, may, upon the application of either  
6 party, and in such manner as it shall direct, cause additional testimony to be  
7 taken; and thereupon if said court shall be of the opinion that said order was  
8 made under some error of law, or is, upon the facts, unjust or unreasonable, it  
9 shall suspend or revoke the same by appropriate decree; otherwise said order  
10 shall be affirmed. Any party to the cause may appeal to the Supreme Court of  
11 the United States within thirty days of the rendition of any final decree of said  
12 court, which court shall proceed to hear and determine the same in due course  
13 without regard to whether the one year hereinbefore limited for the continu-  
14 ance of said order shall have expired or not.

15 SEC. 2. That it shall be lawful for any two or more common carriers to  
16 arrange between and among themselves for the establishment or maintenance of  
17 rates. It shall also be lawful for such carriers to agree, by contract in writing,  
18 filed with the Interstate Commerce Commission, upon the division of their  
19 traffic or earnings, or both; and upon the complaint by petition or any party  
20 interested that any such contract so filed unjustly and unlawfully affects any  
21 person or persons, community or communities, it shall be the duty of the Com-  
22 mission to promptly investigate the matters so complained of in such manner  
23 and by such means as it shall deem proper, and make report in writing with  
24 respect thereto, which report shall include the findings of fact upon which the  
25 conclusions of the Commission are based, and be entered of record. If such  
26 findings sustain in any material particular the allegations of said petition, then it  
27 shall be the duty of said Commission to make an order either annulling said  
28 contract after thirty days' notice, or directing that the said contract and the  
29 practices thereunder, in the respects found to be unjust and unlawful, shall be  
30 changed in the manner prescribed in the order. Should such requirements of  
31 the Commission as to changes be not observed by the carriers, and written  
32 acceptance thereof be not filed with the Commission within thirty days after  
33 notice, then said contract filed as aforesaid shall be annulled. Any such order  
34 shall be subject to all the provisions of section one of this act with respect to  
35 definitive orders made upon petitions presented pursuant to section thirteen of  
36 an act entitled "An act to regulate commerce," approved February fourth,  
37 eighteen hundred and eighty-seven.

38 SEC. 3. That if any party bound thereby shall refuse or neglect to obey or per-  
39 form any order of the Commission mentioned in section one or section two of this  
40 act at any time while the same is in force as provided by said section, obedience  
41 and performance thereof shall be summarily enforced by writ of injunction or  
42 other proper process, mandatory or otherwise, which shall be issued by any cir-  
43 cuit court of the United States upon petition of said Commission, accompanied by a  
44 certified copy of the order alleged to be violated, and evidence of the violation  
45 alleged; and in addition thereto the offending party shall be subject to a penalty

1 of ten thousand dollars, which, together with costs of suit, shall be recoverable  
2 by said Commission by action of debt in any circuit court of the United States,  
3 and when so recovered shall be for the use of the United States. Where, how-  
4 ever, any order made by the Commission shall involve the rate on traffic passing  
5 in part over the line or lines of any railroad company operating in any foreign  
6 country, and passing in part over lines of railroad companies operating within  
7 the United States, or shall involve the usages of such foreign road with respect  
8 to such traffic, then in case such order shall not be observed it shall be lawful  
9 for the Commission, or the court having jurisdiction, in addition to the other  
10 remedies herein provided, to enforce the order against the traffic so passing in  
11 part through a foreign country and in part through the United States, by suspen-  
12 sion of the movement thereof within the United States, save upon the condition  
13 that the terms of the order shall be complied with.

14 SEC. 4. That anything done or omitted to be done by a corporation common  
15 carrier, subject to the act to regulate commerce, which, if done or omitted by  
16 any lessee, trustee, receiver, officer, agent, or representative of such corporation,  
17 would constitute a misdemeanor under said act, shall be held to be a misde-  
18 meanor by such corporation, and upon conviction thereof it shall be subject to  
19 like penalties as are prescribed in said act with reference to individuals, except  
20 as such penalties are herein changed. The willful failure upon the part of any  
21 carrier subject to said act to file and publish the tariffs of rates and charges as  
22 required by said act, or strictly to observe such tariffs until changed according  
23 to law, shall be a misdemeanor, and upon conviction thereof the individual or  
24 corporation offending shall be subject to a fine not less than one thousand dol-  
25 lars nor more than twenty thousand dollars for each offense; and the willful  
26 complicity upon the part of any person owning or interested in the traffic to  
27 which any other rate shall be given than those prescribed in said tariffs shall  
28 likewise constitute a misdemeanor, and, upon conviction, shall subject the  
29 offender to the like penalties last hereinbefore prescribed with reference to the  
30 carrier. In all convictions occurring after the passage of this act, for offenses  
31 under said act to regulate commerce (whether committed before or after the  
32 passage of this act), or for offenses under this section, no penalty shall be  
33 imposed on the convicted party other than the fine prescribed by law, imprison-  
34 ment wherever now prescribed as part of the penalty being hereby abolished.

35 SEC. 5. That in any proceeding for the enforcement of the provisions of the  
36 statutes relating to interstate commerce, whether such proceedings be instituted  
37 before the Interstate Commerce Commission or be commenced originally in any  
38 circuit court of the United States, it shall be lawful to include as parties all per-  
39 sons, in addition to the carrier interested in or affected by the rate, regulation,  
40 or practice under consideration, and inquiries, investigations, orders, and decrees  
41 may be made with reference to and against such additional parties in the same  
42 manner, to the same extent and subject to the same provisions, as is or shall be  
43 authorized by law with respect to carriers.

44 SEC. 6. That whenever the Interstate Commerce Commission shall have reason-  
45 able ground for belief that any common carrier is engaged in the carriage of

1 passenger or freight traffic between given points at less than the published rates  
2 on file, it shall be authorized to present a petition to the circuit court of the  
3 United States having jurisdiction of the parties, alleging such practice ; where-  
4 upon it shall be the duty of the court to summarily inquire into the circum-  
5 stances, and, upon being satisfied of the truth of the allegation, to enforce an  
6 observance of the published tariffs by proper orders and process, which said  
7 orders and process may be enforceable as well against the parties interested in  
8 the traffic as against the carrier.

9 SEC. 7. That all acts and parts of acts in conflict with the provisions of this  
10 act are hereby repealed, but such repeal shall not affect causes now pending nor  
11 rights which have already accrued, but such causes shall be prosecuted to a con-  
12 clusion and such rights enforced in a manner heretofore provided by law.

13 SEC. 8. That this act shall take effect from its passage.

THE ELKINS BILL WITH PROPOSED AMENDMENTS PENDING BEFORE THE  
COMMITTEE.

[S. 3521, Fifty-seventh Congress, first session. (Committee print.)]

[Proposed amendments printed in italics. Omit the words in brackets.]

A BILL To enlarge the jurisdiction and powers of the Interstate Commerce Commission.

1 *Be it enacted by the Senate and House of Representatives of the United States of*  
2 *America in Congress assembled,* That any definite order made by the Interstate  
3 Commerce Commission after hearing and determination had on any petition here-  
4 after presented pursuant to section thirteen of an act entitled "An act to regulate  
5 commerce," approved February fourth, eighteen hundred and eighty-seven,  
6 declaring any existing rate or rates in said petition complained of, for the carriage  
7 of any given article or articles, person or persons, or any regulation or practice  
8 affecting such rates *facilities afforded in connection therewith,* to be unjustly discrimi-  
9 native or unreasonable, and declaring what rate or rates, regulation, or practice  
10 affecting such rate or rates for the future, in substitution, would be just and rea-  
11 sonable, shall become operative and be observed by the party or parties against  
12 whom the same shall be made within thirty days after notice, or in case of  
13 proceeding for review as hereinafter provided, then within forty days after  
14 notice; but the same may at any time be modified, suspended, or revoked by  
15 the Commission, but shall in no case continue in force [and be obeyed] beyond  
16 the period of one year from the day the same becomes originally operative and  
17 is observed]. If such substitute rate shall be a joint one, and the carriers  
18 parties to that rate shall be unable to agree upon the apportionment thereof  
19 among themselves within ten days after any such order shall become operative,  
20 then the Commission may declare as part of its order what would be a just and  
21 reasonable proportion of such rate to be received by each carrier.]: *Provided,*  
22 *however, That if any carrier shall thereafter see fit to increase the rate or rates (or change*  
23 *the regulation or practice) established by such order, it shall file thirty days' previous*  
24 *notice thereof with the Commission in the manner provided by law. When the rate*  
25 *substituted by the Commission as hereinbefore provided is a joint rate, and the carriers*  
26 *parties thereto fail to agree upon the apportionment thereof among themselves within*  
27 *twenty days after notice of such order, the Commission may issue a supplemental order*  
28 *declaring the portion of such joint rate to be received by each carrier party thereto,*  
29 *which order shall be observed by such carriers. When the order of the Commission*  
30 *prescribes the just relation of rates, to or from common points on the lines of the several*  
31 *carriers parties to the proceeding, and such carriers fail to notify the Commission within*  
32 *twenty days after notice of such order that they have agreed among themselves as to the*

1 *changes to be made to effect compliance therewith, the Commission may issue a supple-*  
2 *mental order prescribing the rates to be charged, to or from such common points, by*  
3 *either or all the parties to the proceeding, which order shall be observed by the carriers*  
4 *concerned. [Such] Every order as to its justness, reasonableness, and lawful-*  
5 *ness, whether in respect to the rate or rates, regulation [of] or practice com-*  
6 *plained of, or that prescribed in substitution therefor, or the apportionment of a*  
7 *joint rate or the relation of rates, or otherwise, shall be reviewable by any circuit*  
8 *court of the United States for any district through which any portion of the road*  
9 *of the carrier shall run, to which a petition filed on its equity side shall be first*  
10 *presented by any party interested. [Pending such review the said order shall*  
11 *be suspended unless upon application to and hearing by said court it shall be*  
12 *otherwise ordered; said court and the Supreme Court in case of appeal may, at*  
13 *any time, upon application and notice, suspend or revoke the said order. The sev-*  
14 *eral circuit courts of the United States are hereby invested with full jurisdiction*  
15 *and powers in the premises, including the issuance and pursuit of the necessary*  
16 *process to secure appearance of the parties. The court shall also direct notice to*  
17 *the Commission of the filing of said petition; whereupon it shall be the duty of*  
18 *the Commission, within ten days after the receipt thereof, to cause to be filed in*  
19 *said court, duly certified, a complete copy of its entire record, including peti-*  
20 *tions, answers, testimony, report, and opinion of the Commission, order, and all*  
21 *other papers whatsoever in connection therewith.] It shall be the duty of the*  
22 *Commission, within ten days after notice, to cause to be filed in any court to which such*  
23 *petition shall have been presented a duly certified copy of its entire record in connection*  
24 *with the order to be reviewed, including petition, answers, testimony, report and*  
25 *opinion of the Commission, order, and all other papers whatsoever in connection there-*  
26 *with. The court shall thereupon proceed to hear the same either upon the peti-*  
27 *tion, record, and testimony returned by the Commission; or, in its discretion,*  
28 *may, upon the application of either party, and in such manner as it shall direct,*  
29 *cause additional testimony to be taken; and thereupon if after hearing said court*  
30 *shall be of the opinion that said order was made under some error of law, or is,*  
31 *upon the facts, unjust or unreasonable, it shall suspend or revoke the same by*  
32 *appropriate decree; otherwise said order shall be affirmed. Pending such review,*  
33 *however, the court may, upon application and hearing, suspend said order. Any party*  
34 *to the cause may [appeal to the Supreme Court of the United States] within*  
35 *thirty days of the rendition of any final decree of said court appeal to the Supreme*  
36 *Court of the United States, which court shall proceed to hear and determine [the*  
37 *same in due course without regard to whether the one year hereinbefore limited*  
38 *for the continuance of said order shall have expired or not.] such appeal. The*  
39 *said several courts of the United States shall be and are vested with full jurisdiction and*  
40 *all necessary powers in the premises. The case in both the circuit court and the Supreme*  
41 *Court shall have precedence over all except criminal cases. But such appeal shall not*  
42 *operate to stay or supersede the order of the circuit court, or the execution of any writ*  
43 *or process thereon.*

44 *The defense in all such proceedings for review shall be undertaken by the United*  
45 *States district attorney for the district wherein the action is brought, under the direction*

1 of the Attorney-General of the United States, and the costs and expenses of such defense  
2 shall be paid out of the appropriation for the expenses of the courts of the United States.

3 The Commission may, with the consent of the Attorney-General, employ special counsel  
4 in any proceeding under this Act, paying the expense of such employment out of its own  
5 appropriation.

6 SEC. 2. That it shall be lawful for any two or more common carriers to arrange  
7 between and among themselves for the establishment or maintenance of just and  
8 reasonable rates. It shall also be lawful for such carriers to [agree, by] make  
9 [contract] contracts in writing to be filed with the Interstate Commerce Com-  
10 mission, [upon] for the division of their traffic or earnings, or both thereof; and  
11 [upon] for the formation of traffic associations; [the complaint by petition or any  
12 party interested that any such contract so filed unjustly and unlawfully affects  
13 any person or persons, community or communities, it shall be the duty of the  
14 Commission to promptly investigate the matters so complained of in such manner  
15 and by such means as it shall deem proper, and make report in writing with  
16 respect thereto, which report shall include the findings of fact upon which the  
17 conclusions of the Commission are based, and be entered of record. If such  
18 findings sustain in any material particular the allegations of said petition, then  
19 it shall be the duty of said Commission to make an order either annulling said  
20 contract after thirty days' notice, or directing that the said contract and the  
21 practices thereunder, in the respects found to be unjust and unlawful, shall be  
22 changed in the manner prescribed in the order. Should such requirements of the  
23 Commission as to changes be not observed by the carriers, and written acceptance  
24 thereof be not filed with the Commission within thirty days after notice, then said  
25 contract filed as aforesaid shall be annulled. Any such order shall be subject  
26 to all the provisions of section one of this act with respect to definitive orders  
27 made upon petitions presented pursuant to section thirteen of an act entitled "An  
28 act to regulate commerce," approved February fourth, eighteen hundred and  
29 eighty-seven,] and said Commission shall have the right to examine by its duly  
30 authorized agents, and may require to be filed with it from time to time copies of the  
31 proceedings taken or decisions promulgated or other papers received or issued under, or  
32 pursuant to, or in the execution of any such contracts in writing. After any such con-  
33 tract in writing shall have gone into operation, the Commission may, either upon its  
34 own motion or upon complaint of any party interested, inquire into the actual effect  
35 thereof, and if it shall be of opinion that such contract results in unreasonable rates,  
36 unjust discrimination, inadequate service, or is in any respect in contravention of said  
37 act to regulate commerce it may enter an order annulling said contract on a date  
38 named, which shall not be less than ten days from notice of said order, and thereupon  
39 said contract shall cease and determine, or it may enter an order directing that said  
40 contract and the practices thereunder shall be changed in the manner prescribed in  
41 such order; and if all parties to such contract shall within fifteen days after notice of  
42 such order file with the Commission written acceptances of such order, said contract shall  
43 be held to be re-formed and thereafter be maintained accordingly; otherwise said con-  
44 tract shall cease and determine.



1     SEC. 3. That if any party bound thereby shall refuse or neglect to obey or per-  
2     form any order of the Commission mentioned in section one or section two of  
3     this act at any time while the same is in force as provided by said section, obedi-  
4     ence and performance thereof shall be summarily enforced by writ of injunction  
5     or other proper process, mandatory or otherwise, which shall be issued by any  
6     circuit court of the United States upon petition of said Commission, accompanied  
7     by a certified copy of the order alleged to be violated, and evidence of the violation  
8     alleged; and in addition thereto the offending party shall be subject to a penalty  
9     of [ten] *not less than five thousand dollars for each day of the continuance thereof,*  
10    which, together with costs of suit, shall be recoverable by said Commission  
11    by action of debt in any circuit court of the United States, and when so recov-  
12    ered shall be for the use of the United States. Where, however, any order made  
13    by the Commission shall involve the rate on traffic passing in part over the line  
14    or lines of any railroad company operating in any foreign country, and passing in  
15    part over lines of railroad companies operating within the United States, or shall  
16    involve the usages of such foreign road with respect to such traffic, then in  
17    case such an order shall not be observed it shall be lawful for the Commission,  
18    or the court having jurisdiction, in addition to the other remedies herein pro-  
19    vided, to enforce the order against the traffic so passing in part through a foreign  
20    country and in part through the United States, by suspension of the movement  
21    thereof within the United States, save upon the condition that the terms of the  
22    order shall be complied with.

23    SEC. 4. That anything done or omitted to be done by a corporation common  
24    carrier, subject to the act to regulate commerce, which, if done or omitted by  
25    any lessee, trustee, receiver, officer, agent, or representative of such corporation,  
26    would constitute a misdemeanor under said act, shall be held to be a misdemeanor  
27    by such corporation, and upon conviction thereof it shall be subject to like pen-  
28    alties, as are prescribed in said act with reference to individuals, except as such  
29    penalties are herein changed. The willful failure upon the part of any carrier  
30    subject to said act to file and publish the tariffs of rates and charges as required  
31    by said act, or strictly to observe such tariffs until changed according to law, *or*  
32    *any departure therefrom by such carrier by means of the payment of a rebate or other-*  
33    *wise,* shall be a misdemeanor, and upon conviction thereof the individual or cor-  
34    poration offending shall be subject to a fine not less than one thousand dollars  
35    nor more than twenty thousand dollars for each offense; and the willful com-  
36    plicity upon the part of any person owning or interested in the traffic to which  
37    any other rate *or rates* shall be given than those prescribed in said tariffs shall  
38    likewise constitute a misdemeanor, and, upon conviction, shall subject the  
39    offender to the like penalties last hereinbefore prescribed with reference to the  
40    carrier. In all convictions occurring after the passage of this act, for offenses  
41    under said act to regulate commerce (whether committed before or *after the*  
42    *passage of this act*), or for offenses under this section, no penalty shall be imposed  
43    on the convicted party other than the fine prescribed by law, imprisonment  
44    wherever now prescribed as part of the penalty *being hereby abolished.*

1     SEC. 5. That in any proceeding for the enforcement of the provisions of the  
2 statutes relating to interstate commerce, whether such proceedings be instituted  
3 before the Interstate Commerce Commission or be commenced originally in any  
4 circuit court of the United States, it shall be lawful to include as parties all per-  
5 sons, in addition to the carrier interested in or affected by the rate, regulation,  
6 or practice under consideration, and inquiries, investigations, orders, and decrees  
7 may be made with reference to and against such additional parties in the same  
8 manner, to the same extent and subject to the same provisions, as is or shall  
9 be authorized by law with respect to carriers.

10    SEC. 6. That whenever the Interstate Commerce Commission shall have rea-  
11 sonable ground for belief that any common carrier is engaged in the carriage of  
12 passenger or freight traffic between given points at less than the published rates  
13 on file, *or is rendering any additional service in any way beyond what is specified in*  
14 *its published tariffs*, it shall be authorized to present a petition to the circuit  
15 court of the United States having jurisdiction of the parties, alleging such prac-  
16 tice, whereupon it shall be the duty of the court to summarily inquire into the  
17 circumstances, and, upon being satisfied of the truth of the allegation, to enforce  
18 an observance of the published tariffs by proper orders and process, which said  
19 orders and process may be enforceable as well against the parties interested in  
20 the traffic as against the carrier.

21    SEC. 7. That all acts and parts of acts in conflict with the provisions of this  
22 act are hereby repealed, but such repeal shall not affect causes now pending  
23 nor rights which have already accrued, but such causes shall be prosecuted to a  
24 conclusion and such rights enforced in a manner heretofore provided by law.  
25 *And all existing laws relative to testimony in cases or proceedings under or connected*  
26 *with the act to regulate commerce shall also apply to any case or proceeding authorized*  
27 *by this act.*

28    SEC. 8. That this act shall take effect from its passage.



## THE NELSON BILL AS ORIGINALLY INTRODUCED.

[S. 3575, Fifty-seventh Congress, first session.]

A BILL to amend an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof.

1 *Be it enacted by the Senate and House of Representatives of the United States of*  
2 *America in Congress assembled,* That section ten of an act entitled "An act to  
3 regulate commerce," as amended March second, eighteen hundred and eighty-  
4 nine, be amended so as to read as follows:

5 "SEC. 10. Every carrier, every lessee, trustee, receiver, officer, agent, or rep-  
6 resentative of a carrier who shall transport or offer to transport traffic subject  
7 to this act at any other rate or upon any other terms and conditions than are  
8 duly published in accordance with the provisions of the act, or who by the pay-  
9 ment of any rebate, or by any other device, departs from such published rate  
10 in the transportation of such traffic, or who transports such traffic without having  
11 first published a tariff applicable to the same, agreeably to the provisions of the  
12 act, and any person who procures, or solicits to be done, or assists, aids, or abets  
13 in the doing of any one of the aforesaid acts, shall be deemed guilty of a misde-  
14 meanor and shall, upon conviction thereof, be subject to a fine of not less than  
15 five thousand dollars nor more than twenty thousand dollars for each such offense.

16 "Any person, whether an employee or a principal, or a member of a firm or  
17 company, or an employee, agent, or officer of a corporation, for any of whom as  
18 consignor or consignee any carrier subject to the provisions of this act shall  
19 transport property, who shall knowingly, by false description, false weight, or  
20 false representation of the contents of any package, or by any other fraudulent  
21 means, obtain or attempt to obtain the transportation of property, with or with-  
22 out the collusion of the carrier or any of its employees, agents, or representa-  
23 tives, for a less compensation than that prescribed by the published tariffs or  
24 schedules of rates in force at the time shall be deemed guilty of a misdemeanor  
25 and shall, upon conviction thereof, be subject to a fine of not less than one thou-  
26 sand dollars nor more than five thousand dollars for each such offense.

27 "Every carrier, every lessee, trustee, receiver, officer, agent, or representative  
28 of a carrier who knowingly violates any provision of this act, or fails to perform  
29 any requirement thereof, for which no penalty is otherwise expressly provided,  
30 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be  
31 subject to a fine of not less than one thousand dollars nor more than five thou-  
32 sand dollars for each such offense. Every corporation which shall be guilty of

1 any act or omission which if done by an individual would be a misdemeanor  
2 under the provisions of this act shall be deemed guilty of such misdemeanor  
3 and shall be subject to the same penalty which is provided against the individual.

4 "Every violation of this act shall be prosecuted in any court of the United  
5 States having jurisdiction of crimes within the district in which such viola-  
6 tion was committed; and whenever the offense is begun in one jurisdiction  
7 and completed in another, it may be dealt with, inquired of, tried, determined,  
8 and punished in either jurisdiction in the same manner as if the offense had  
9 been actually and wholly committed therein.

10 "In construing and enforcing the provisions of this section, the act, omission,  
11 or failure of any officer, agent, or other person acting for or employed by any  
12 common carrier shall, in every case, be also deemed to be the act, omission, or  
13 failure of such carrier as well as that of the person.

14 "All offenses heretofore committed shall be prosecuted and punished as pro-  
15 vided for by the laws existing at the time such offenses were committed, for  
16 which purpose all acts or parts thereof inconsistent with this act are continued  
17 in force."

18 SEC. 2. That section fifteen of said act is hereby amended by adding the fol-  
19 lowing words thereto:

20 "If the Commission, after full hearing had upon any petition hereafter pre-  
21 sented, determines that the defendant or defendants are in violation of any of  
22 the provisions of the act, in respect to any rate, relation of rates, whether  
23 between localities or commodities, classification of freight, or other practice, it  
24 shall be its duty to determine what rate, relation of rates, classification, or other  
25 practice should be observed for the future in order to correct the wrong found  
26 to exist, and it shall order said defendants to observe the same. In case of  
27 ordering a change in the relation of rates, if it shall become necessary, in order  
28 to establish or maintain a just relation thereof, to prescribe the rate or rates to  
29 be observed by either or all of the parties concerned therein, it shall be its duty  
30 so to do; and when a rate involved in any case is a joint rate, it shall further  
31 determine the proportions in which the rate shall be shared by the several  
32 carriers, if they fail to agree among themselves in respect thereto. In either of  
33 these cases, if the several defendants shall not have notified the Commission  
34 within ten days from the service of the order that they have come to an agree-  
35 ment in respect to the relative rates in question, or in respect to the division of  
36 the joint rate prescribed, the Commission shall thereupon fix the rates or  
37 proportions to be observed for the future, in the case in question, as above  
38 provided.

39 "Any such order shall be termed a 'definitive order,' and shall specify the  
40 time when the same is to take effect, which shall in no case be less than twenty  
41 days after service of said order upon defendant. Any defendant may review  
42 said order by filing, within twenty days from the service thereof, with the cir-  
43 cuit court of the United States for that district in which its principal office is  
44 situated, a bill in equity for that purpose, and where there are several defend-

ants, that court shall have jurisdiction in which such petition is first filed. The United States shall be made the defendant in such proceeding and the Commission shall be forthwith notified of the pendency thereof. Within fifteen days from receiving such notice the Commission shall file in such court a complete certified copy of the entire record in such case, and the court shall thereupon proceed to hear the same upon such record; but it may also, in case either party desires to submit further testimony, and such testimony could not reasonably have been produced before the Commission, instruct the Commission to take and certify up such testimony. If upon hearing the court shall be of the opinion that the order of the Commission is not a lawful, just, and reasonable one, it shall vacate the order; otherwise, it shall dismiss the proceedings in review. In either case the court shall file with its decision a statement of the reasons upon which such decision is based, a copy of which shall be certified forthwith to the Commission. If the order of the Commission is vacated and no appeal is taken, the Commission may reopen the case for further hearing and order, or it may make a new order without further hearing; but such subsequent order shall be subject to the same right of review as above provided.

"The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

"Either party may, within thirty days, appeal from the judgment or decree of the circuit court to the Supreme Court of the United States; but such appeal shall not operate to stay or supersede the order of the circuit court.

"The defense in all such proceedings for review shall be undertaken by the United States district attorney for the district wherein the action is brought, under the direction of the Attorney-General of the United States, and the costs and expenses of such defense shall be paid out of the appropriation for the expenses of the courts of the United States.

"The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this act, paying the expenses of such employment out of its own appropriation."

SEC. 3. That section sixteen of said act as amended March second, eighteen hundred and eighty-nine, is hereby amended by striking out all of the first paragraph down to and including the words "and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States," and inserting in lieu thereof the following:

"A definitive order which has become operative by its terms and has not been suspended or vacated in the manner specified in the preceding section shall be obligatory upon and observed by the defendant carrier or carriers against whom it is made: *Provided*, That when a carrier has actually observed said order for

1 the space of two years it shall no longer be binding upon said carrier: *And pro-*  
2 *vided further,* That the Commission may at any time rescind or modify such  
3 order.

4 "If, however, the carrier, after the expiration of that period, shall make any  
5 change from the rate or other practice directed by the Commission, any party  
6 interested may file with the Commission his objection to such change within  
7 sixty days, and the Commission may thereupon order the carrier to restore and  
8 maintain the rate or practice required by the original order pending its investi-  
9 gation as to the lawfulness or reasonableness of such change. The order of the  
10 Commission directing a restoration of the rate originally required shall not be  
11 subject to review, but its final order, issued pursuant to such investigation, shall  
12 be subject to the same right of review as is provided in the preceding section of  
13 this act.

14 "If a carrier neglects or refuses to obey an order which is obligatory upon it  
15 as above, the circuit court of the United States for any district through which  
16 any portion of the road of such carrier runs shall, upon petition of the complain-  
17 ant in the original suit, or of the Commission, or of any party interested, enforce  
18 obedience to such order by mandamus, injunction, or other summary process of  
19 said court, and the circuit courts of the United States are hereby invested with  
20 the necessary powers thereto. Every carrier, or the receiver, lessee, trustee, offi-  
21 cer, or agent of such carrier, neglecting or refusing to obey such order shall also  
22 be subject to a penalty of ten thousand dollars for each and every day which  
23 he or it is in default, said penalty to be recovered for the use of the United  
24 States in an appropriate suit brought in the name of the United States in the  
25 circuit court for any district through which any portion of the road of the car-  
26 rier runs.

27 "Any circuit court of the United States for a district through which any por-  
28 tion of the road of a carrier runs shall, upon petition of the Commission or of  
29 any party interested, enjoin such carrier or its receivers, lessees, trustees, officers,  
30 or agents from giving, and a shipper from receiving, with respect to interstate  
31 transportation of persons or property subject to the provisions of this act, any  
32 concession from the lawfully published rate, or from accepting persons or prop-  
33 erty for such transportation if a rate has not been lawfully published; and by  
34 'concession' is meant the giving of any rebate or drawback, the rendering of  
35 any additional service, or the practicing of any device or contrivance by which  
36 a less compensation than that prescribed by the published tariffs is ultimately  
37 received, or by which a greater service in any respect than that stated in  
38 such tariffs is rendered. And in proceedings of this nature said court shall  
39 have power to compel the attendance of witnesses, both upon the part of the  
40 carrier and of the shipper, who shall be required to answer on all subjects relat-  
41 ing directly or indirectly to the matter in controversy, and to compel the pro-  
42 duction of all books and papers, both of the carrier and of the shipper, which  
43 relate directly or indirectly to such transaction; but all persons so required to  
44 testify shall have the same immunity from prosecution and punishment as is



1 provided in an act approved February eleventh, eighteen hundred and ninety-  
2 three, entitled 'An act in relation to testimony before the Interstate Com-  
3 merce Commission, and in cases or proceedings under or connected with an  
4 act entitled, "An act to regulate commerce," approved February fourth,  
5 eighteen hundred and eighty-seven, and amendments thereto.'"

6 SEC. 4. That all acts and parts of acts in conflict with the provisions of this  
7 act are hereby repealed, but such repeal shall not affect causes now pending nor  
8 rights which have already accrued, and such causes shall be prosecuted to a  
9 conclusion and such rights enforced in the manner heretofore provided by law.

10 SEC. 5. That this act shall take effect from its passage.



---

HEARINGS.

---



# FREIGHT RATES ON LUMBER.

UNITED STATES SENATE COMMITTEE  
ON INTERSTATE COMMERCE,  
*February 7, 1902.*

A committee (composed of Messrs. E. M. Adams, E. R. Burkholder, E. S. Miner, J. E. Evans, and Harry A. Gorsuch) representing the Missouri, Kansas and Oklahoma Association of Lumber Dealers, appeared before the Committee on Interstate Commerce.

The CHAIRMAN (Mr. Elkins, of West Virginia). This meeting has been called for the purpose of hearing the gentlemen present, who represent the lumber interests of Kansas and the West, and who desire, as I understand, some amendment of the interstate-commerce law. Gentlemen, we have just an hour in which to hear you, and you can parcel out the time among yourselves.

## STATEMENT OF E. M. ADAMS.

Mr. E. M. ADAMS (of Mound City, Kans.). Mr. Chairman and gentlemen of the committee, this committee represents the Missouri, Kansas and Oklahoma Lumber Dealers' Association; also that association represents the Southern manufacturers' interests, and behind that are the great interests of the people, and they are really the most interested of all parties concerned—more so than even the association we particularly represent, because they receive the ultimate benefits of anything that may be done by Congress in the way of strengthening the interstate-commerce law, which is, after all, what we are here for.

We in the West, Mr. Chairman, have suffered a great many grievances, among which are the excessive and unjust rates of freight charged by the railroads, and unjust discrimination in rates. We had intended to give you some facts and figures, having a prepared statement of that kind, but unfortunately that is not at this moment in our hands. Perhaps I ought to apologize, but the fact is that Mr. Burkholder, a member of our committee, who has possession of that statement, was detained so that he has not been able to arrive here from New York in time for this hearing. Consequently, while we are without data, yet we can briefly state our points. It might seem an unusual, almost an improper, thing if I should state to you the full extent of the discriminations practiced against us by the railroads; it is certainly astonishing. We appealed to the railroad authorities in regard to it, asked them to reduce the discriminations; in fact, to reduce the rates that they had advanced arbitrarily about a year ago. The committee of railroad freight agents, to whom we made representations, stated to us that they did not consider that they had had their share

of the Republican prosperity, of which we had boasted, and as a consequence the rates were arbitrarily advanced.

The CHAIRMAN. By what railroads?

Mr. ADAMS. By all the railroads that carry lumber in our section, west of the Mississippi River; perhaps our secretary can give you their names.

Mr. GORSUCH. The Iron Mountain, the Santa Fe, the Rock Island, the Union Pacific, the Cotton Belt, the Kansas City Southern, the 'Frisco—in fact, every road that runs into Kansas City; there are 23 distinct lines.

The CHAIRMAN. You may proceed, Mr. Adams.

Mr. ADAMS. We complain that these roads arbitrarily advanced their rates from 1 to 5 cents per hundred.

Senator FORAKER. Did you state when that advance was made?

Mr. ADAMS. A little over a year ago. Perhaps our secretary can give you the exact date.

Senator FORAKER. That is not important.

Mr. ADAMS. We made a showing of facts and figures, that on general averages the rate on lumber per ton per mile was a great deal more than the average rate on all other commodities per ton per mile; that lumber, being a nonperishable commodity, should have a low rate; it is always used as ballast in freight matters, and whenever there is anything to be thrown out of a freight train on account of overloading, or for any other cause, a car of lumber is side tracked; so that, in addition to the discrimination against us in rates, they also discriminate against us in the matter of carrying our lumber promptly and quickly to its destination. The railroads in our section, west of the Mississippi River, carry an unusually large share of the lumber, and it pays, too, large a share of the whole sum paid for freights. That is the claim we make.

Senator CULLOM. Allow me to ask where this lumber comes from.

Mr. ADAMS. Mostly from Arkansas, Texas, and Louisiana, going north.

Senator CULLOM. Not from the North?

Mr. ADAMS. Going north.

The CHAIRMAN. Going where?

Mr. ADAMS. Going to all points through Oklahoma, Kansas, Nebraska, Illinois, Indiana, Missouri, and to Chicago.

The CHAIRMAN. You do not have any export lumber?

Mr. ADAMS. No.

The CHAIRMAN. Your complaint is as to freight rates in those States?

Mr. ADAMS. Yes, sir.

The CHAIRMAN. You say they advanced the rates how much?

Mr. ADAMS. From 1 to 5 cents a hundred.

Senator KEAN. Did the price of lumber advance also?

Mr. ADAMS. The price of lumber advanced also very largely, which made it very hard on the consumers. It is really in the interest of the consumers—the general public—that we are here now.

Senator CLAPP. This bill that Senator Nelson introduced he told me was introduced at the request of the lumbermen. Was it upon your request?

Mr. ADAMS. It was not at the request of this committee as a committee. I will say, however, that, as I understand that bill, it largely corrects the difficulties of which we are complaining.

Senator CLAPP. Are there any northwestern lumbermen here, as far as you know?

Mr. ADAMS. I do not know of any other lumbermen's association that is represented here except our own.

The CHAIRMAN. No; they were heard the other day by the Committee on Commerce. The basis of their complaint was largely the export trade to Europe.

Senator CLAPP. But Senator Nelson told me he prepared and introduced his bill at the request of some lumbermen, and I think there were some northwestern lumbermen in it.

The CHAIRMAN. Mr. Adams, you say that they advanced the rate from 1 to 5 cents per hundred. What is the ordinary rate, say, from Little Rock, Ark., to St. Louis or Chicago, on a carload?

Mr. ADAMS. It is 23 cents a hundred to St. Louis from all points.

The CHAIRMAN. How much is that a carload?

Mr. ADAMS. A carload is usually about 40,000 pounds.

Senator FORAKER. What did you say was the rate from all points to St. Louis?

Mr. ADAMS. I said it was 23 cents per hundred. I was wrong about that; it is 25 cents to Kansas City, and only 15 cents to St. Louis.

The CHAIRMAN. What is that per carload?

Mr. ADAMS. A carload is about 40,000 pounds.

The CHAIRMAN. How many feet to the hundred?

Mr. ADAMS. About 16,000 feet of lumber in an average carload; about 16 tons to the carload.

The CHAIRMAN. What would be the through rate per carload from Arkansas? Would that be \$60?

Mr. ADAMS. I pay on a carload from \$80 to \$90 per car, and from that up to over \$100.

The CHAIRMAN. You are a shipper or consumer?

Mr. ADAMS. I am a retailer.

The CHAIRMAN. You are not a shipper?

Mr. ADAMS. No. There are no shippers present.

The CHAIRMAN. You are consumers?

Mr. ADAMS. We are retailers who sell directly.

The CHAIRMAN. I had received the impression that you were shippers, and were complaining of excessive rates from the shippers' standpoint.

Mr. ADAMS. No, sir; though at the same time we are representing them, in a way, simply because their interests and ours run on the same lines.

The CHAIRMAN. Do you have any complaint to make on behalf of the people who sell the lumber, or on behalf of the mill men, the manufacturers?

Mr. ADAMS. No; although they are interested just as much as we are so far as rates are concerned.

Senator FORAKER. What is your business?

Mr. ADAMS. Retailer of lumber.

Senator FORAKER. Where are you located?

Mr. ADAMS. At Mound City, Kans.

The CHAIRMAN. I interrupted you, Mr. Adams; proceed.

Mr. ADAMS. Now, gentlemen, in order to make it impressive and to particularize in regard to the difficulties we have suffered in rates, I will say that a year ago we appointed a committee to meet the Gen-

eral Traffic Association and try to arrange rates, but utterly failed to do so. We told them that if they gave us no relief we should be obliged to proceed to extreme measures in that respect, and in carrying out that idea a committee was appointed, with authority to draw upon the treasurer for any necessary expenses, to procure the best counsel that we were able to obtain in Kansas, and we employed the ex-chief justice of the supreme court of Kansas, a former justice, and also the attorney-general of the State of Kansas. After looking the interstate-commerce law over thoroughly they informed us that the remedy we had anticipated taking—going before the Interstate Commerce Commission—would fail us; that the best remedy, in their judgment, that we could find—and, of course, we deferred to their judgment, because it was the best we could buy—that in their judgment there was more chance for relief under the old common law in the courts of the justices of the peace of the State than we had under the interstate-commerce law in going before the Interstate Commerce Commission, because they said there was not vitality enough in the interstate-commerce law to enable us to obtain the relief we sought unless we should be very long lived, and some of us have not a great while to stay, I am sorry to say.

Therefore we proceeded to have prepared a large number of suits to be brought before justices' courts in the State of Kansas in order to relieve us from this difficulty. We did not actually commence any suits, but we prepared a large number of cases based upon excessive charges to individuals. At first we declined to pay those charges, but in order to make a foundation for a suit we paid under protest, tendering the exact amount of money we were willing to pay as a just and equitable rate, and took two receipts, one for the first lot of freight and the other for the excess. Then we went before the justices' courts to recover our money. That has been our method. The Traffic Association found that we were putting them to a large amount of trouble; that, although they might win out hereafter, they had a large number of suits to defend. We told them that we intended to call for juries in each case—juries of our own citizens; that we were sure of a verdict, and that that verdict would be carried into effect, so that they would have to fight against an adverse verdict in each case in every county in the State of Kansas. The result of that action is what I want to call your attention to.

When they realized the difficulties they were going to have to contend with from this course of action they proposed a compromise with our committee, which was finally accepted, although it did not come up to what we thought was right. We told them, however, that it would be only temporary. Yet I may say that these terms, effected on this compromise, accepted and adopted by our committee, have saved the western half of the State of Kansas over \$75,000 a year on freights. I take that to be a conclusive admission on the part of the railroads that they were wrong; they never would have yielded that amount if they had not been wrong and known it themselves. In fact, some of their agents told us privately that they knew those rates were excessive, and that if they had the power they would be willing to grant what we asked, on the ground taken in our complaints, but that if they should undertake to do so it would cost them their positions. That is what the general freight agent of one of the greatest railroad systems in the United States stated to us.



Now, gentlemen, it is these difficulties we complain of. In the first place, excessive rates are charged arbitrarily, and in the next place there is discrimination.

The Interstate Commerce Commission have informed us that on our bare statement of the facts and figures to them we had a good case, a strong case, and they advised us to proceed before them; but, as I said before, our term of life as individuals is limited.

Senator FORAKER. What is the difficulty about getting a hearing before the Interstate Commerce Commission?

Mr. ADAMS. There is no difficulty whatever.

Senator FORAKER. Unless I have been wrongly informed, you can have a hearing there very expeditiously?

Mr. ADAMS. At once. In fact, they invited us to bring our case before them; but they say the remedy is not perfect. I wish I had here the facts and figures that I handed to our Mr. Burkholder, but he has been detained.

Senator FORAKER. I am only trying to get at your idea, not for any controversial purposes, but simply to suggest.

Mr. ADAMS. Allow me to state one case in which I think I am entirely accurate, and I know if I am wrong the secretary can correct me.

As one instance, I wish to cite a certain rate of freight on lumber, 300 miles for 29 cents per hundred, on practically the same line, with a little deviation (another branch of the same line), when the rate to Chicago, 1,100 miles, was 24 cents per hundred; 300 miles for 29 cents; 1,100 miles over practically the same line for 24 cents. We claim that that is an unjust and unreasonable discrimination. It does not give people the same opportunities to engage in the same kind of business and in the same way at equal rates with others.

Senator CULLOM. You say you got relief by going into the courts of the State, and they finally compromised?

Mr. ADAMS. We think we forced them to make that concession; and it was a great concession.

Senator CULLOM. If you can scare them, as you seem to have done in that case, why can you not keep on doing the same thing?

Mr. ADAMS. I do not know. But, gentlemen, you are here for the purpose of legislation; and we look to you to give us a better remedy.

Senator CULLOM. We want to see whether we need to legislate. That is the main thing.

Senator FORAKER. As I understand the interstate-commerce law, the action of the railroads, of which you complain here, is just what is positively prohibited by that law.

Mr. ADAMS. It is.

Senator FORAKER. There is no question about that, is there?

Mr. ADAMS. No; no question.

Senator FORAKER. And there is no question but that the Interstate Commerce Commissioners are empowered to correct that violation of law?

Mr. ADAMS. That is correct.

Senator FORAKER. They can do it summarily—a great deal more expeditiously than the Congress of the United States can act.

Senator CULLOM. I wish to ask whether the Interstate Commerce Commissioners advised you to proceed before justices of the peace, or whether they advised you to come before them and make your case?

Mr. ADAMS. Our employed attorneys advised us to go to the justices' courts.

Mr. EVANS. May I correct you, Mr. Adams?

Mr. ADAMS. Yes.

Mr. EVANS. In regard to bringing these suits before justices, we were advised that every individual who had a case for \$20 or less could bring such a suit before a justice of the peace; that while that would involve the necessity of every party aggrieved bringing his individual claim before a justice (which would be very burdensome to individuals), yet at the same time we would succeed. They also advised us that we would not succeed before the Interstate Commerce Commission because of its lack of power to enforce its orders or decisions.

Senator FORAKER. If the Interstate Commerce Commission is empowered to adjudicate your complaint, what do you want with anything more?

Mr. ADAMS. I think I can explain that point.

Senator FORAKER. That is what I want to know—whether it is because they have not power to enforce their judgments, and you want additional legislation on that point.

Mr. ADAMS. Our point is just this: We would have to bring each individual case before the Commission. For instance, in order to have judgment for an overcharge or discrimination against me, I should have to bring a case for each act of discrimination; that case would be adjudicated and an order issued. That order could be appealed to the courts, from one court to another, until it was taken to the Supreme Court of the United States, and the very next case would have to take the same course. It does not give us any relief for the future.

Senator CULLOM. I take it that this is the point that the gentleman wishes to make—and it is the real point of the case—that if the Commission should render a verdict (if you choose to call it a verdict) or make an order, under the present decisions of the Supreme Court as to the power of the Commission, that would not be effective until it is passed upon or approved by the courts of the country.

Mr. ADAMS. That is it exactly.

Senator CULLOM. What they want is power to make an order which shall stand as a determination of the case until it is set aside by the courts?

Mr. ADAMS. That is it. We want that made immediately effective until set aside by the courts. Another thing, Senator: We want it forbidden that the railroads shall charge excessive rates on that same line, if you please, and under the same circumstances or under similar circumstances in the future. We want that decision to cover future transactions.

Senator CULLOM. The court says that under the present law that can not be done.

Mr. ADAMS. No, sir. We think that is a lameness of the present law. We think it is weak; that it lacks vitality, virility, if you please. As we understand it, those are the particular points wherein the present law is weak, though I will say that we did not come here prepared, and I doubt whether it is within our province as a matter of propriety to formulate legislation for you.

The CHAIRMAN. You can suggest.

Mr. ADAMS. We can make suggestions, of course; but our intention was to tell you the difficulties we labor under, how the whole of the great West is complaining of it among the people, where the real interest is. We look to you to find a remedy, to find the best way out. That is the purpose of this committee coming here.

Senator CULLOM. What you state is the complaint of your people that you are discriminated against and overcharged in freight rates?

Mr. ADAMS. Yes, sir.

Senator CULLOM. As matters of fact?

Mr. ADAMS. Yes, sir. If we can say anything that will throw new light on the circumstances connected with this problem, or in regard to the difficulties that we run against, and that will aid in securing new remedial legislation, we shall be only too glad that we have come. I do not know that there is anything further I care to say. Mr. Evans, would you like to make any additional statement?

### STATEMENT OF J. E. EVANS.

Mr. J. E. EVANS (of Emporia, Kans., a retail dealer in lumber, and a vice-president and director of the Missouri, Kansas and Oklahoma Association of Lumber Dealers). The rate on lumber from any point in the southwest—Arkansas, Louisiana, or Texas—to Kansas City is 23 cents a hundred; it was 22, but now it is 23. Understand, the rate to Topeka and other points closer to the shipping point is 26 cents; at Emporia, which is still closer, the rate is 28 cents; Chicago gets her yellow pine from the same points at 24; Indiana at 38; and Cottonwood Falls, only 30 miles west of Emporia, gets the rate of 30 cents.

Mr. ADAMS. I might state, in this connection, that not only are localities discriminated against, but certain States are discriminated against. It is the habit of the railroads to make a blanket rate, covering a large section of country. At important points I get lumber from Texas, Indian Territory, Louisiana, and Arkansas, all at the same rate. Any yellow-pine lumber from the South comes to me at 23 cents per hundred, no matter where it comes from.

Senator CULLOM. Do you complain of that?

Mr. ADAMS. Oh, no; but the State of Kansas pays a relatively higher rate of freight than Missouri, Illinois, or even Nebraska.

Mr. EVANS. There is no doubt about that.

Senator FORAKER. The gist of the whole matter, then, is that you contend that there are discriminations in violation of the interstate-commerce law, and that the Interstate Commerce Commissioners are not empowered by the statute, as it now stands, to give you the remedy you desire, viz, to prevent these discriminations?

Mr. ADAMS. That is it.

Senator FORAKER. You want such an amendment to the interstate-commerce law as may give them that authority?

Mr. ADAMS. That is it exactly.

Senator FORAKER. So as to save you from the necessity of going into the courts to work out your remedy?

Mr. ADAMS. Yes, sir.

The CHAIRMAN. Does any other gentleman wish to be heard? [A pause.] If not, you gentlemen can now be excused while the committee holds a meeting for other matters.

Mr. ADAMS. Gentlemen, we thank you for your attention to this hearing.

Mr. EVANS. I should like to have it understood that we may leave here the written statement made by Mr. Burkholder, who is absent now, as Mr. Adams has stated.

The CHAIRMAN. There is no objection to that. You may have it sent to the committee, and it will be filed with your testimony as part of the testimony.

Senator KEAN. And let it be printed.

The CHAIRMAN. Yes, and it will be printed with the other.

The statement above referred to was submitted to the committee during its sitting on April 11, 1902, by Mr. Frank Barry, of Milwaukee, when the following occurred:

Mr. BARRY. Mr. Chairman, I have here a communication from the Missouri, Kansas, and Oklahoma association of lumber dealers, which they desire to submit. A committee representing that association, I understand, appeared before your committee some time ago and were then given permission to submit this paper.

The CHAIRMAN. Have you read it, Mr. Barry?

Mr. BARRY. Yes.

The CHAIRMAN. You vouch for it as being a proper and respectful paper, do you?

Mr. BARRY. Yes. I simply submit it for them, at their request. If it contains anything that is objectionable, you can change it.

The CHAIRMAN. We will accept it, Mr. Barry, if you say it is all right, because I know who you are, and I know you would not ask us to embody anything in this testimony that is not right and proper.

Mr. BARRY. It is all right, Mr. Chairman.

The CHAIRMAN. We are so busy and pressed that we can not read all these documents, before they are printed, in order to ascertain whether they are in proper shape.

Mr. BARRY. I may have some other documents to submit, and so I shall be very careful about them.

Following is the paper referred to:

*To the Interstate Commerce Committee, Washington, D. C.:*

The undersigned, representatives of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers, having been assured that their views in writing, in reference to the needed legislation in the interest of interstate commerce, would be considered, beg leave to submit the following:

The interstate commerce law enacted by Congress in 1887 was the outcome of constant public demand for at least ten years. The conditions existing at that time, and which gave rise to this demand, confront the public to-day in more aggravated form. President Arthur, in his message of December 4, 1882, recommends to Congress the regulation of interstate commerce, arraigns the corporations which own or control the railroads of adopting such measures as tend to impair the advantages of healthful competition, and to make hurtful discriminations in the adjustment of freightage. He points out the fact that these inequalities have been corrected in several of the States by appropriate legislation, but so far as such mischiefs affect commerce between the States, they are subjects of national concern, and Congress alone can afford relief.

In his message in December, 1883, he points out the relations that ought to exist between the public carriers and their patrons, and lays upon Congress the responsibility of granting relief and protection to the general public in the following language:

"While we can not fail to recognize the importance of the vast railway systems of the country, and their great and beneficent influences upon the development of our material wealth, we should, on the other hand, remember that no individual and no corporation ought to be invested with absolute power over the interest of any other citizen or class of citizens. The right of these railway corporations to a fair and prof-

itable return upon their investments and to reasonable freedom in their regulations must be recognized; but it seems only just that, so far as its constitutional authority will permit, Congress should protect the people at large in their interstate traffic against acts of injustice which the State governments are powerless to prevent."

I desire to draw your attention to the time when these messages were delivered; this was prior to the birth of populism; also to the fact that they come from a Republican President of the United States, who gives authoritative expression of existing facts and of a universal demand for needed legislation. The charge has been made that this demand for the amendment of the interstate-commerce law is populist in its origin and character. It is no more populist than the origin of the law, and no law has ever been placed on our statute books which gave greater satisfaction to the general manufacturing and commercial public.

The necessity of this law is made apparent by the study of the number and the variety of cases tried and decided by the Commission before its authority was questioned and denied by the courts.

In his message of December, 1896, President Cleveland says: "The justice and equity of the principles embodied in the existing (interstate commerce) law passed for the purpose of regulating transportation charges are everywhere conceded, and there appears to be no question that the policy thus entered upon has a permanent place in our legislation." He states further that the wholesome effects of this law are manifest and have amply justified its enactment and expresses the hope "that the recommendations of the Commission upon this subject will be promptly and favorably considered by Congress." Instead of Congress heeding the advice of the nation's Chief Executive, and the nation's spokesman, and carrying out the nation's wishes in this matter, the Supreme Court acted in 1897 and most effectually deprived the Commission of the power necessary to enforce its findings. The immediate result of this decision was the inauguration of a period of extortionate rates, rank discrimination, and a general hold-up of a forbearing, but a determined and outraged public.

President Roosevelt, voicing the sentiment of the general public, again calls the attention of Congress to the need of legislation along this line. He states "that the cardinal provisions of the interstate-commerce act were, that railway rates should be just and reasonable, and that all shippers, localities, and commodities should be accorded equal treatment." That "experience has shown the wisdom of its purposes, but has also shown, possibly, that some of its requirements are wrong, certainly that the means devised for the enforcement of its provisions are defective." He concludes by saying that "the act should be amended. The railway is a public servant. Its rates should be just to and open to all shippers alike. The Government should see to it that within its jurisdiction this is so, and should provide a speedy, inexpensive, and effective remedy to that end. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies. The subject is one of great importance and calls for the earnest attention of Congress.

The observation of these three Presidents covers a period of twenty years. They agree that an adequate interstate-commerce law is a necessity, that it is indispensable to the administration of justice, and that the responsibility for the enactment of such a law rests with Congress. For twenty years and more the general public has demanded this law. In 1887 the Commission was created, as was then supposed, with power to stop and correct abuses; in 1897 the Supreme Court held that their powers were purely advisory. Since then the Commission is practically powerless; it is, perhaps, a little better than no Commission, but so far as granting practical relief is concerned the country would be just as well off without any Commission. It is contended by representatives of the railways that the granting of power to the Commission to substitute a just for an unjust rate, or an equitable for a discriminative rate, is equivalent to depriving the roads from the management of their property and investing the Commission with power to make rates. This was not the intention of the law of 1887, nor the practice of the Commission under that law, neither is it the wish of the business men of to-day; what we contend for is a law which will give the Commission power, after a full, fair, and impartial hearing of both parties in interest to put into effect a just and equitable rate, and this rate to be observed by the roads in question until the decision of the Commission is reversed by the Federal courts.

The prosperity of the railways depends on the traffic given them by the public, just as the success of a bank depends on the deposits and business of its patrons. There is no public institution in the land which is administered more autocratically than our national banks by the Comptroller of the Currency. Yet the only bankers that kick against this supervision are those who are determined to do an illegitimate business. The same is true of railroads. Honest railroad men have nothing to fear;

they know that the public does not want to rob them, and that the law as it now stands affords them ample protection; they also know that it is the inalienable right of their patrons to be protected by law against the unjust methods of unscrupulous railroad managers.

The lumbermen of Kansas and Oklahoma, and the wholesalers shipping to these points have had special experiences with the railroads on the question of lumber rates. The lumber rates to Kansas and to Oklahoma have not only been arbitrarily high but have been in direct violation of the interstate-commerce law, which provides that a greater charge shall not be made for a short haul than for a long haul, under similar conditions. It is a general rule in both passenger and freight traffic that the company having the shortest and most direct route dictates the rate. This is one of the reasons offered by the railroads why Missouri, Illinois, Indiana, and other States have a much lower average rate on lumber than Kansas and Oklahoma, although the distance from the center of production in the Southern forests to the center of consumption is much shorter, and in many instances the lumber passes through Oklahoma and Kansas to reach these more distant points. The argument advanced has been that some railroad having a direct route to some point in the lumber district makes the rate for all roads to these centers. We do not object to this rule, but we do object to railroads using one method of procedure or one law to make rates to one State and another law to make rates to another State.

The rates from the central points of production to the central points of consumption in the various States are as follows:

	Average distance.	Average rate.
	<i>Miles.</i>	<i>Cents.</i>
Oklahoma .....	350	29½
Kansas .....	600	29
Missouri .....	600	23
Illinois .....	1,000	24
Indiana .....	1,300	25½
Ohio .....	1,500	28

This discrimination in rates greatly retards building in this territory; it deprives us of all the natural advantages of location in close proximity to the southern forests. This territory has to pay an excessively high rate to enable the roads to give an extremely low rate to more remote points, in order to get into the territory of roads hauling lumber from Northern forests.

The Kansas rate, established more than fifteen years ago, was made via Kansas City. The rate established then to the central Kansas points was 27½ cents per 100 pounds. This rate was made to conform to the existing white-pine rate from the North. Since then white pine has gone out of use, and yellow pine is used almost wholly; in addition diagonal roads were built, running south through Kansas and Oklahoma direct to the forests of Texas, Arkansas, and Louisiana, shortening the distance of the lumber haul 200 miles or more. The route for carrying the Southern lumber product has been changed; the lumber comes no longer by way of Kansas City; and yet these old Kansas City rates are steadily maintained. Kansas City lies 40 miles north of the center of the State, and the opening of the diagonal roads to the south has moved the center of lumber production 80 miles west. This new condition saves to the center of Kansas consumption a haul of over 200 miles, or about 33 per cent of the entire distance. This shortened haul entitles us to a proportionate reduction in rates. But instead of reducing rates, in December, 1899, the roads advanced the rate 10 per cent to this territory, on the plea that they were entitled to share in the general prosperity of the country. Through the efforts of the attorney-general of the State and the political situation in reference to State railroad legislation, we succeeded in getting the advance changed from 2½ cents to 1 cent per hundred pounds. But still there was an advance instead of a reduction.

Another reason why lumber rates should be less than local rates per ton per mile—and unfortunately they are higher in the State of Kansas and the Territory of Oklahoma—lies in the fact that the kind of service required to haul lumber is less expensive than that required for most other commodities. The roads can use a cattle car, a box car, a flat car, or any other kind of car that may be to them convenient; the lumber is moved whenever it suits the road, without any loss to them, except their own delay; the cost of loading and unloading is borne by the consignor and the consignee; the payment of freight is in large amounts and is always cash; the risk is the minimum as compared with the hauling of other commodities, such as live stock, grain, and other commodities even more perishable; no suits confront the roads in the adjust-

ment of losses; besides the distribution of the Southern lumber trade extends over the entire year and over the entire territory traversed north and south; the Southern lumbermen are not dependent on winter snows for logging purposes; their stocks are always full, unless depleted through the channels of trade. The territory intervening between Kansas and the Southern forests is rich in natural resources; every foot of it affords a large amount of traffic in both directions. These considerations ought to be strong factors in determining the rates on lumber. But I shall give you a practical idea of the existing conditions. Let us suppose a train load of lumber originates at Conroe, Tex., on the Atchison, Topeka and Santa Fe Railroad, and let us suppose that this lumber is distributed along its line to Chicago, the distances and rates will be as follows:

	Distance.	Rate per 100 pounds.
	<i>Miles.</i>	<i>Cents.</i>
Gainesville, Tex. ....	342	18½
Ardmore, Okla. ....	382	25
Purcell, Okla. ....	449	26½
Guthrie, Okla. ....	513	28½
Wichita, Kans. ....	653	28½
Topeka, Kans. ....	815	26
Lawrence, Kans. ....	842	24
Kansas City, Mo. ....	882	23
Chicago, Ill. ....	1,340	24

And all points between Carrollton, Mo., and Chicago on this line get a 24-cent rate. You will notice that the rate from Gainesville, Tex., to Ardmore, Okla., jumps up 6½ cents per 100 pounds in a distance of 40 miles, or 30½ mills per ton per mile, whereas the through rate to Chicago is 3.6 mills per ton per mile. The rate increases in inverse ratio to the distance the lumber is carried. This is not an isolated case, but is a fair sample of the lumber rates adopted by all the roads operating in the State of Kansas and in Oklahoma.

Texas originates lumber within its own State, and has a stringent State railroad law; this accounts for the advance in freight as soon as the road strikes Oklahoma, and also emphasizes the necessity of an interstate railroad law. The distance from Conroe to Chicago is more than twice the distance from Conroe to Wichita, and yet the rate to Chicago is 24 cents, while the rate to Wichita over the same road under precisely similar conditions is 28½ cents per 100 pounds.

Under the existing interstate-commerce law the Commission is powerless. We employed the best legal talent obtainable, and were advised by them that the Commission can only advise and intercede with the railroads to do the right thing by its patrons, but has no power to enforce its findings. They can not inaugurate a fair and reasonable rate; neither can we obtain redress in any court of the land, except in so far that we can bring suit for recovery in individual cases where the roads have made excessive and unreasonable charges; but to prosecute a suit of this nature takes years under our present system, while in the meantime the excessive charges are carried on by the roads.

With these facts and conditions confronting us and affecting all lines of trade throughout the nation, and presented constantly and persistently by the Presidents of the United States to Congress for the last twenty years for favorable action, it seems unnecessary for business men to plead with Congress to do what seems to them their plain duty. The men who are pleading with you to place on our statutes (Federal) such a law as is suggested in President Roosevelt's message are not wild-eyed Populists. They are men who own and represent capital. They are men who by brain and brawn develop the varied industries of the nation. They are men who produce the business which makes the railroads a public necessity and a paying investment, men who understand the laws of business, men who realize the cost and appreciate good railroad service and are willing to pay for it.

We desire to draw your attention to the fact that the owners and operators of our great public railroads are men subject to like passions as other men. The fact is that men at the heads of the various departments are able men in the prime of life who have an ambition to make a financial record for their respective departments. To gain their ambition they very often resort to means which are neither just nor legal, and we look to you, the only body of men in the nation who have power to give protection, to pass a law which makes justice available and easy and speedy to the humblest citizen of our land. We know that the interests of the railroads do not weigh heavier with you than the interests of the public, and that you will not by inaction make it possible for unscrupulous railroad men to rob an unprotected public.

I know that factitious and misleading arguments are made by the representatives of the railroads, claiming that this legislation would place the rate-making power in the hands of five inexperienced men, and would deprive them of the management of their business. We do not ask for any such law. We would ask you to pass a law which, while it protects the public, also protects the railroads. Any other law would be unconstitutional. The proposed Nelson bill gives ample protection to both parties in interest, and does not deprive the railroads any more of the management of their business than the rulings of the Comptroller of the Currency deprives national banks of the management of their business, or the rulings of the Treasury Department, in administering the revenue, deprives importers or merchants of the management of their business. These departments see that these lines of business are conducted in a lawful and legitimate way, and the only parties that suffer are those who are guilty of fraudulent methods. The railroads are amply protected in this measure against any mistake made by the Commission, intentionally or otherwise, and can get speedy action in any of the Federal courts.

In conclusion we desire to state that we come not to ask a favor, but simple justice. We do not desire to arraign class against class. We ask you as our representatives and lawmakers to place upon our statute book a law which will prevent this. If in your judgment the general public is to be left to the mercy of conscienceless railroad magnates, either repeal the interstate-commerce law or let it stand in its present worthless form. Their practices of extortion and discrimination turn good and able citizens into anarchists. "Patriotism lives and grows on what it feeds upon." Create or tolerate a condition which deprives A of an equal chance with B, which will build up one man by pulling down another, or build up one city, community, or State by tearing down another, and let this condition continue for years against the protest of the greatest and most responsible men of the nation, including our Presidents, and you will create a condition of distrust, dissatisfaction, disaster, and political disaffection.

All of which is respectfully submitted.

E. M. ADAMS,  
E. S. MINER,  
E. R. BURKHOLDER,  
*Committee.*

(Dictated by E. R. Burkholder, Hillsboro, Kans.)

APRIL 5, 1902.

At the sitting of the committee on Friday, April 11, 1902, the following-named gentlemen appeared: E. P. Bacon, of Milwaukee, chairman of the executive committee of the Interstate Commerce Law Convention, held in St. Louis in November, 1900; Bernard A. Eckhart, of Chicago, representing the Chicago Board of Trade and the Illinois Manufacturers' Association; Hon. Blanchard Randall, of Baltimore, president of the National Board of Trade; Charles England, of Baltimore, grain commissioner; George F. Mead, representing the Boston Chamber of Commerce and the New England Manufacturers' Association; J. B. Daish, representing the National Hay Association; Aaron Jones, grand master of the National Grange, Patrons of Husbandry, and Frank Barry, of Milwaukee.

### STATEMENT OF E. P. BACON.

The CHAIRMAN. Gentlemen, Mr. Bacon is here and wishes to be heard on what are called the Nelson bill and the Elkins bill. He desires to present the whole question. He has given it a great deal of thought, and, I understand, represents the Interstate Commerce Law Convention that was held in St. Louis some time ago.

Mr. BACON. Consisting of delegates from various commercial organizations.

The CHAIRMAN. Before you proceed with your statement, Mr. Bacon, give us your place of residence and your business.

Mr. BACON. My place of residence is Milwaukee; my business is that of grain commission merchant.



The CHAIRMAN. You can proceed.

Mr. BACON. Mr. Chairman, the convention I represent is termed the Interstate Commerce Law Convention, which was held at St. Louis in November, 1900, consisting of delegates from 41 commercial organizations of various kinds. That convention was called for promoting the passage of the Cullom bill, which was then pending in the Senate, but which, as you all know, failed of passage. That convention appointed a committee, which, in consequence of the failure of the passage of the Cullom bill, proceeded to frame a new bill, removing the objections which had been urged to the Cullom bill but retaining the principal features of that bill, or at least what were considered the most important and vital features of it, only two or three in number, omitting the other provisions, some of which had been objected to in different quarters, the object being to have the interstate-commerce act so amended as to give it greater effectiveness, and it was desired that the committee should concentrate its efforts upon these two or three vital provisions.

I will state that the committee, after framing a new bill, which was introduced in the House by Mr. Corliss, and by Mr. Nelson in the Senate, proceeded to communicate with the various commercial organizations of the country in order to secure their opinions of the provisions of the bill. The committee received responses from a very large number of those organizations in approval of the bill, and stating that they had passed resolutions requesting their representatives in Congress to give it their support. I will state briefly of what those organizations consist: Of national organizations there are twelve, comprising the various classes of business—grain dealers, millers, livestock associations, retail grocers, wholesale lumber dealers, National Dining Table Association—

Senator FORAKER. I suggest that, without reading that list, you hand it to the stenographer to be embodied with your statement, which will give us more time to hear what you have to say.

Mr. BACON. I will do so.

Senator FORAKER. Then we shall have it all before us in print.

Mr. BACON. I would like to state, however, that of State organizations there were 18 in number, representing the various branches of trade and industry; and of local organizations there are about 50 in number, making about 80 in all.

The CHAIRMAN. Then you would like to have this paper incorporated as part of your statement?

Mr. BACON. If you please.

The paper is as follows:

#### NATIONAL ORGANIZATIONS.

Grain Dealers' National Association.  
 Millers' National Association.  
 National Board of Trade.  
 National Dining Table Association.  
 National Livestock Association.  
 National Retail Grocers' Association.  
 National Wholesale Lumber Dealers' Association.  
 Winter Wheat Millers' League.  
 Millers' National Federation.  
 National Wholesale Druggists' Association.  
 National League of Commission Merchants.  
 National Hay Association.

## STATE ORGANIZATIONS.

Illinois Manufacturers' Association.  
 Indiana State Board of Commerce.  
 Kansas Millers' Association.  
 Michigan State Millers' Association.  
 Minnesota Retail Grocers and General Merchants' Association.  
 Missouri, Kansas, and Oklahoma Lumber Association.  
 New England Granite Manufacturers' Association.  
 New England Shoe and Leather Association.  
 Ohio Grain Dealers' Association.  
 Ohio State Association—Patrons of Industry.  
 Oklahoma Millers' Association.  
 Texas Cattle Raisers' Association.  
 Texas Millers' Association.  
 Utah Live Stock Association.  
 Wisconsin Cheese Makers' Association.  
 Wisconsin Retail Hardware Dealers' Association.  
 Wisconsin Retail Lumber Dealers' Association.  
 Nebraska Retail Grocers and General Merchants' Association.

## LOCAL ORGANIZATIONS.

## CALIFORNIA.

Claremont Citrus Union.  
 Colton, San Bernardino County Fruit Exchange.  
 Los Angeles Chamber of Commerce.  
 Los Angeles, Southern California Fruit Exchange.  
 North Pomona, Indian Hill Citrus Union.  
 Pomona Fruit Growers' Exchange.  
 Pomona, San Antonio Fruit Exchange.  
 Porterville Board of Trade.  
 Porterville, Tulare County Citrus Fruit Exchange.  
 San Diego Chamber of Commerce.  
 Santa Barbara Lemon Growers' Exchange.  
 Santa Barbara, Santa Barbara County Chamber of Commerce.

## COLORADO.

Colorado Springs Chamber of Commerce.

## ILLINOIS.

Chicago Board of Trade.

## INDIANA.

Indianapolis Board of Trade.  
 Indianapolis Commercial Club.

## IOWA.

Davenport Business Men's Association.

## KANSAS.

Topeka Commercial Club.

## LOUISIANA.

New Orleans Board of Trade.

## MARYLAND.

Baltimore Lumber Exchange.

## MASSACHUSETTS.

Brockton Board of Trade.  
 Fitchburg Merchants' Association.  
 Worcester Board of Trade.

## MICHIGAN.

Detroit Merchants' and Manufacturers' Exchange.

## MINNESOTA.

Duluth Produce and Fruit Exchange.

## MISSISSIPPI.

West Point, Aberdeen Group Commercial Association.

## MISSOURI.

Kansas City Board of Trade.  
St. Louis Builders' Exchange.

## NEBRASKA.

Lincoln, Retail Grocers' Association.  
South Omaha Livestock Exchange.

## NEW YORK.

Brooklyn, United Retail Grocers' Association.  
Buffalo Lumber Exchange.  
Buffalo Merchants' Exchange.  
Middletown, Business Men's Association.  
New York Lumber Trade Association.  
New York Manufacturers' Association.  
New York Merchants' Association.  
New York Produce Exchange.  
New York Stationers' Board of Trade.

## NORTH CAROLINA.

Wilmington Chamber of Commerce.

## OHIO.

Cincinnati Chamber of Commerce. (Will send representative.)  
Toledo Produce Exchange. (Will participate in expense and send representative to Washington.)  
Newark Board of Trade.

## OREGON.

Portland Chamber of Commerce.

## PENNSYLVANIA.

Pittsburg Chamber of Commerce.

## WASHINGTON.

Spokane Chamber of Commerce.

## WISCONSIN.

Milwaukee Chamber of Commerce.  
Milwaukee Merchants and Manufacturers' Association.  
Milwaukee Association of Master Steam and Hot Water Heating Engineers.  
Wyoming-Muscoda Dairy Board.

Mr. BACON. I would like to state the names of individual States which are represented in this expression: California, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin.

Senator DOLLIVER. May I trouble you to state what Iowa organization is represented?

Mr. BACON. The Davenport Business Men's Association is the only one from Iowa.

Senator KEAN. What ones from Massachusetts?

Mr. BACON. The Brockton Board of Trade, the Fitchburg Merchants' Association, and the Worcester Board of Trade.

Senator FORAKER. Be kind enough now to look at Ohio.

Mr. BACON. The Cincinnati Chamber of Commerce and the Toledo Produce Exchange.

Those are the local organizations. There are State organizations, some of which I will mention. Ohio Grain Dealers' Association, Ohio State Association Patrons of Industry. Those are the only two State organizations of Ohio, I believe, that have reported.

Senator KEAN. What from New York?

Mr. BACON. Brooklyn, United Retail Grocers' Association; Buffalo Lumber Exchange, Buffalo Merchants' Exchange; Middletown Business Mens' Association; New York Lumber Trade Association; New York Manufacturers' Association; New York Merchants' Association; New York Produce Exchange, and New York Stationers' Board of Trade.

I will also state that the legislatures of several States have passed joint resolutions recommending the passage of this bill or of the former Cullom bill.

The CHAIRMAN. Do you mean the Nelson bill that we have here before us?

Mr. BACON. I speak of the Nelson bill; yes. But several State legislatures a year ago passed joint resolutions recommending the passage of the Cullom bill.

The CHAIRMAN. That is the bill we had under consideration during the last Congress?

Mr. BACON. Yes, sir.

Senator FORAKER. Please tell us the purposes of the bill, how it is designed to accomplish those purposes; and then point out to us the difference between the Nelson bill and the Elkins bill. I assume you are familiar with them. That is what we want to hear rather than the number of people who have indorsed it.

Mr. BACON. Michigan, Wisconsin, Minnesota, South Dakota, Kansas, Louisiana, and Iowa are the States that have recommended the passage of the bill.

The CHAIRMAN. The legislatures of those States have asked for the passage of the Cullom bill; is that what you mean?

Mr. BACON. Part of them asked for the passage of the Cullom bill and part of them the Nelson bill.

Senator DOLLIVER. I think the legislature of Iowa has taken no action in reference to this bill—at least, no action of that legislature has been sent here.

Mr. BACON. I was informed by Mr. Trewin, a member of the Iowa senate, that it passed the senate on a certain date, and two days afterwards he advised me that it had passed the house.

Senator DOLLIVER. I doubt whether your information is correct.

The CHAIRMAN. Now please address yourself to the merits of these bills, as suggested by Governor Foraker.

Mr. BACON. In the first place, the Nelson bill (S. 3575) provides that it shall be the duty of the Commission, when it finds, upon investigation, after hearing all parties interested—

The CHAIRMAN. That is the Interstate Commerce Commission.

Mr. BACON. Yes. That it shall be the duty of the Interstate Commerce Commission, upon investigation, upon formal complaint filed, if it shall find that the rate in question is unreasonable or unjust, to specify what in their judgment is a just and reasonable rate in that particular case, and that rate shall be put into effect.

That provision is also included in the Elkins bill (S. 3521).

The second provision of the Nelson bill is that the orders of the Commission shall be operative at a time specified in the order of the Commission, which shall not be less than twenty days after the order is issued, unless appeal is taken or unless application is made for a review of the order before a circuit court, in which case it shall be suspended for thirty days; and that the circuit court, if it finds upon examination that the order proceeds upon an error of law or is unreasonable under the facts, it may suspend the order of the Commission for a specified time, or during the proceedings under the adjudication of the order. That, I believe, differs somewhat from the Elkins bill. But that is considered a point of equal importance with that of giving the Commission the authority to prescribe the rate to be substituted for the one found to be wrong, for the reason that the cases that have been taken before the courts contesting the orders of the Commission have been in course of adjudication for a long period of time, and the order consequently suspended during that period.

The commission states in one of its recent reports that the average length of time that these cases have been before the courts has been four years. There are several that have been before the courts from five to seven years. There were two that were decided by the Commission which were eight years before the court. There is one which has not yet been decided although it has been nine years before the court. The result of that, as you can readily see, is to make the rulings of the Commission practically inoperative, of no effect, affording no relief whatever to the complainants. After a competent body, skilled in questions of railroad traffic, has found a rate to be unreasonable or unjust, it is continued in force during all this period of adjudication, and the public is subjected to a continuance of that wrong and that injustice, in the absence of relief of this kind making the order operative. It should continue in operation until the courts have declared it wrong. The Commission is utterly unable to afford any relief to the business community as it is now.

The practice on the part of the railway companies in these cases has been to protract the proceedings to the utmost possible extent, it being readily seen that it is for their interest to do so. If the Commission has ordered a reduction of 20 per cent, the longer the railway company can prevent the putting into operation of that order, the more it is to its advantage, of course; and it has made use of that to a very great extent, so that it has come to be regarded as almost useless on the part of the business men to bring any case before the Commission. In some cases it takes two or three years to get them through the Commission, to hear all the parties concerned, and to bring the matter to a conclusion. Any business man or commercial organization undertaking the conduct of a case before the Commission becomes almost tired out before it reaches a conclusion in the Commission itself; and then the case is subject to a further delay of three to six years while the validity of the order of the Commission is being contested in the

courts. This practically renders the interstate-commerce act of no value whatever to the business community.

Senator FORAKER. Does the bill which you favor undertake in any way to have that difficulty remedied in the commission?

Mr. BACON. As to the delays before the commission?

Senator FORAKER. Before the commission itself, yes.

Mr. BACON. There is no special provision made in that respect.

Senator FORAKER. The remedy is aimed simply at the courts, so far as any provision of the bill is concerned?

Mr. BACON. The desire is to avoid any further delay. Nevertheless, the business organizations have urged upon the Interstate Commerce Commission the expediting of cases before the commission, and will undoubtedly continue to do so.

Another provision of the Nelson bill is that the testimony taken before the Commission shall be certified to the court when the order of the Commission is appealed from; and if additional testimony is offered before the court by either party, the court is to refer the case back to the Commission to take that additional testimony, and to certify the facts to the court as thereafter found. The object of that is to necessitate the carriers presenting all their testimony before the Commission. It has been the practice to present only a part of it, and then when the case is appealed to the courts to introduce additional testimony, and the consequence has been that the decision of the court has been at times on an entirely different case from that before the Commission.

Furthermore, that causes delay. Ordinarily it takes a case a year, or a year and a half, to go through the commission, and once in awhile two to three years. But the carriers, by means of this method of introducing additional testimony before the court, simply subjects the shipper or the commercial organization, complainant in the case, to unnecessary delay. That seems to be one of the means that is taken advantage of for the purpose of promoting delay, and preventing any order of the commission going into effect within a reasonable time.

One of the important differences between the two bills is that under the Elkins bill the order of the Commission is made obligatory for only a period of one year, while under the Nelson bill it is made obligatory for two years. Under the present law there is no limitation to the time of this obligation. The committee that prepared the Nelson bill deemed it best for the protection of the railway interests to provide that the order of the Commission should be in effect only two years. An objection had been made by the railway interests to the effect that the Commission having the power to prescribe the rate to be observed in the future, when it found the existing rate to be wrong, would before many years have made all the rates for the country. To obviate that objection on the part of the carriers, the committee in the preparation of the Nelson bill made this provision: That the order of the Commission should be obligatory only for a period of two years.

Senator FORAKER. That is the order fixing the rate, where complaint has been made and heard?

Mr. BACON. Yes.

Senator DOLLIVER. Did I understand you to say that in case the rate suggested by the Commission is obviously wrong and burdensome to the company, the court would have the right to suspend it pending litigation?

Mr. BACON. That is what I said. Let me read to you the exact provision of the bill in that respect. I read from the second paragraph on page 6 of the Nelson bill:

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

Senator CARMACK. The application of itself suspends the order, as I gather from the reading of that.

Mr. BACON. Yes; the application to the circuit court for a review of the order itself suspends the operation of that order for thirty days. I was about to say, in further response to the question asked by Senator Foraker, that the Commission is not authorized under this bill to make any change in rates in order to correct any error found to exist in the rates, except where formal complaint has been filed before the Commission, and that complaint has been investigated and all parties in interest have been given an opportunity to be heard.

The CHAIRMAN. Is it clearly provided that this order of the Commission shall be in force for two years, and that thereafter the railroads shall make a new rate in that given case?

Mr. BACON. The railroad will be free to make a new rate in that case. It is provided, however, as a protection to any interested party in regard to the change of rate, that he may file with the Commission his objections to such change.

The CHAIRMAN. I know; but let us suppose that the Commission makes an order reducing the rate; that order stands good under the Nelson bill for two years, does it?

Mr. BACON. Two years.

The CHAIRMAN. And after that the railroad is at liberty to make another rate?

Mr. BACON. Yes; and if they do make another rate there is this provision: That any party interested may file with the Commission his objections within sixty days, and the Commission "may thereupon order the carrier to restore and maintain the rate or practice required by the original order, pending its investigation as to the lawfulness or reasonableness of such change."

The CHAIRMAN. Suppose that the railroad, after the Commission has made an order, takes no appeal, but goes on to carry out the Commission's order upon an individual case; that order is binding for two years, and only two years?

Mr. BACON. That is right.

The CHAIRMAN. Consequently, the railroad can make any rate it pleases in that case?

Mr. BACON. It can. But anyone interested has the privilege of filing with the Commission objections to that change, and in that way reopen the case before the Commission.

Senator CARMACK. You mean any shipper?

Mr. BACON. Any shipper can file his objections with the Commission itself.

The CHAIRMAN. How long do you think that would keep a rate in force?

Mr. BACON. It would remain in force another two years.

The CHAIRMAN. Can this go on indefinitely?

Mr. BACON. There is no provision as to how often this process may be repeated. But the provision is inserted so that any party interested, feeling that he has been wronged by the change of rate, can have an opportunity to have it considered under the circumstances existing at the time.

Senator CLAPP. At the end of the two years would the subject be thrown back where it was originally?

Mr. BACON. Exactly.

Senator CLAPP. The Commission has jurisdiction to take up another complaint.

Mr. BACON. It would be virtually a new complaint brought before the Commission, to be considered with reference to the changed conditions and circumstances.

Senator DOLLIVER. Does the order of the Commission contemplated here apply to the individual only or to the classification?

Mr. BACON. Simply to the individual complaint. The complaint may, however, be in relation to an unjust and unreasonable rate or to an unjust and unreasonable classification.

Senator DOLLIVER. Suppose it is an unjust personal discrimination, is not the order of the Commission liable to create more discriminations than it cures, by putting that individual case out of relation with everybody else?

Mr. BACON. A personal discrimination is simply a criminal matter, and the parties are proceeded against criminally. Personal discriminations do not require a determination of the question of whether there was discrimination or not; that is, the payment of rebates is by the present law made a crime, and the railway company guilty of it and the party receiving the rebate are both amenable for the violation of the law under criminal proceeding.

Senator DOLLIVER. But the complaint is very general that there is a secret departure from the published rates.

Mr. BACON. That is one of the serious complaints.

Senator DOLLIVER. What is there in this bill to make it more difficult for the railroads to depart from the order of the Commission secretly than there is to depart secretly from their own agreed and published schedule rates?

Mr. BACON. There are provisions in this bill aiming particularly at that evil, making it more practicable for the commission to obtain the necessary evidence to convict the parties of violation of law. But the payment of rebates, like any other dishonest proceeding, will never be wholly prevented by law. It can only be punished when practiced, the same as any other criminal act. But that is an entirely different thing from the matter of exercising supervision over rates.

Senator CARMACK. Is not the matter of rebates the worst trouble in the whole business?

Mr. BACON. I am very much surprised to find that there is entertained very generally by the public that idea, that individual discrimination is the great evil of the transportation business. But from my own observation—and I have made a study of the operation of the interstate-commerce act ever since its original enactment and have followed its workings very closely—my own observation is that that is comparatively a trivial evil. The great evil is the discrimination between localities—discrimination in the published rates—certain localities being discriminated against in favor of other localities.

Senator DOLLIVER. Has Milwaukee escaped that evil?



Mr. BACON. It has not. I do not know of any city in the country that is more discriminated against than Milwaukee. I will say, however, that Milwaukee brought a case before the Commission some six years ago on account of discrimination and obtained a decision in its favor from the Commission. The Commission ordered a reduction, and that order has never been obeyed by the railway companies, for the reason that just about the time the decision was promulgated the decision of the Supreme Court declared that the Commission had not the authority to prescribe what change should be made in the rates when it found existing rates wrong. Under that decision the railway companies absolutely refused to pay any attention to the order of the Commission. And I will say in this connection that up to that time, which was ten years after the organization of the Commission, the Commission had made its orders in just such cases, prescribing what changes should be made in the rates, and those orders were almost universally observed by the transportation companies. The right of the Commission to do that had never been questioned up to that time. The condition of traffic matters throughout the country during that period was the most satisfactory it has ever been either before or since.

The chief purpose of this bill is to restore that condition of things, to give the Commission specifically this authority which it exercised during that period, under what it deemed inferentially to be its power, its right, and not only its power and right, but its duty. The decision of the Supreme Court was not predicated upon any question as to the constitutional right of Congress to vest the Commission with this power, but it was confined to the fact that the power was not specifically conferred in terms by the law.

Senator DOLLIVER. What is the usual motive for discriminating against localities, as in the Milwaukee case to which you have referred?

Mr. BACON. I will answer that question.

Senator CARMACK. It is more frequently discriminated against than some other localities, is it not?

Mr. BACON. The motive is not for the purpose of discriminating in favor of one locality as against another, but it arises from competition for business over a certain territory. Certain railroads taking business from a certain territory to a certain market are in competition with other roads taking the same kind of business to another market, and each of the roads is trying, of course, to get the advantage over the other in the division of the business. In consequence of that the rates become discriminative.

Senator KEAN. Demoralized.

Mr. BACON. Not demoralized, but discriminative as against certain localities. For instance, here are these various seaboard cities—Boston, New York, Philadelphia, and Baltimore. Certain rates are made from the western country to these seaboard cities. Each of the trunk lines is desirous to obtain as large a share of that business as possible, and in making rates each seeks to make rates that will give itself the advantage over competitors. The railroads, in order to break up destructive competition between them, agree upon certain differentials from certain territory to certain markets or certain ports; they agree upon that with reference to the distribution of the business, not with reference to the question of right or equity. It is simply to divide the business as nearly satisfactorily as possible under the operation of the rates between themselves. The result of that often is that certain places are discriminated against and certain other places are favored.

That practice will be continued until some competent authority requires it to be changed, because it is only natural that the railroad companies should continue it.

A case of that kind came up a few years ago with reference to Cincinnati and Chicago in regard to the business to the southeast as compared with the business from the seaboard cities to the southeast. In that case the Commission decided that the rates from Cincinnati and Chicago into that territory were unjustly large as compared with the rates from the seaboard cities into that territory, and the Commission prescribed a certain difference which should be made in those rates in order to equalize the two sections of the country with reference to the Southern trade. That case was carried into court, appealed to the Supreme Court, and the Supreme Court denied the right of the Commission to specify what rates should be enforced in future.

In reference to the exercise of this power by the Commission I wish to read an extract from the annual report of the Commission for 1897, in which it expressed itself on this subject. It says:

It (the Commission) understood that when, as in this case, the rates had been established by the carriers and afterwards challenged or complained of as unreasonable, and the question of unreasonableness had been tried, the Commission could declare not only what rate was wrong, but what would be right, and could lawfully petition the court to enforce the right. That is to say, when a rate had been established by the carriers, challenged by or on behalf of shippers, and tried by the Commission in a proceeding ordered and regulated as near as may be in conformity with United States court proceedings, the Commission had a right, and it became its duty when justified by the facts, to declare the rate wrong, decide what rate would be right, and through the judgment of the court compel the carrier to perform its legal duty to receive and carry property at rates which are reasonable and just.

The Commission exercised this power in a case commenced in the second month after its organization and continued to exercise it for a period of more than ten years, during which time no member of the Commission ever officially questioned the existence of such authority or failed to join in its exercise. As already stated, the authority of the Commission to modify and reduce an established rate, and to enforce a reasonable rate for the future, was not questioned in the answer of the defendant in the Atlanta rate case, decided March 30, 1896 (previously cited), nor had it ever been denied in any of the answers made to more than four hundred cases previously commenced, many of them alleging unreasonable and unjust charges and praying the Commission to enforce a reduction and lower rates in the future.

I introduce that to show clearly what the practice of the Commission had been for that ten years, and also to show the fact that the authority for the Commission to proceed in that way had never been questioned during that ten years by any of the carriers.

We were speaking, when I was interrupted, about the limit of time during which these orders of the Commission should be obligatory, being two years under the Nelson bill but only one under the Elkins bill. I wish to say to the committee that the limitation of one year strikes business men as being altogether too limited. Even two years is regarded by business men generally as a very short time. The length of time taken, the amount of labor required to prepare a case before the Commission and to carry it through to a decision, and then the possible contest of that case in the courts, entail such an amount of time, labor, and expense upon the shipper, or upon the commercial organization conducting it, that if the order were only to be in force for one year there would not be one case in twenty, to say the least, that would ever be brought before the Commission; that is, it would be considered by the party injured that it would not pay him to go to

the labor and expense for the sake of having the prescribed rate in effect only one year.

Senator DOLLIVER. I want to get more clearly the application of this bill. When there has been an adjudication of an individual complaint, would it not be better to have some mechanism by which the order could be made applicable to all such cases?

Mr. BACON. That is the case, sir.

Senator DOLLIVER. Is there any process is the law by which an order made in an individual case shall also be made obligatory upon all cases similarly situated?

Mr. BACON. That is the case as regards what I term personal discriminations—payment of rebates, for instance.

Senator DOLLIVER. Or extortion?

Mr. BACON. That is a different matter. The question of discriminative rates must be determined by the Commission in each case.

Senator CLAPP. You do not understand Senator Dolliver. Complaint is made by an individual that the rate which he is paying upon something is excessive.

Mr. BACON. I understood it.

Senator CLAPP. What the Senator means, as I understand, is how far can the Commission upon that complaint take into account the effect of modifying that rate as to other cases? That is what the Senator is referring to.

Mr. BACON. The Commission takes into consideration the relation of that rate to other rates and determines largely upon that relation as to reasonableness or unreasonableness. It has no power to order a general reduction. It can only order a change in the particular rate complained of in each individual case.

Senator FORAKER. Why not make the rate for every shipper, not for the one shipper?

Mr. BACON. The Commission can go no farther than to change the rate in the particular instance where complaint has been made.

The CHAIRMAN. Suppose that the court after final review at the end of two years should decide that the order of the Commission was wrong, and that the rate fixed by the railroad in the first instance was right. Then what recourse would the railroad have upon the shipper to get back the difference in money?

Mr. BACON. It is impossible to make any such provision. It is simply a question of who shall suffer during the pendency of the proceeding.

The CHAIRMAN. Should not the shipper give bond for the repayment of that money?

Mr. BACON. It is impossible to do that for the reason that the party who has paid the freight has passed it along on his goods sold to the consumer, and so he does not himself sustain any damage.

The CHAIRMAN. Let me go further: Suppose this order had affected one hundred shippers, as Senator Clapp suggests, to a given destination or between certain points; and suppose that the railroad should lose \$400,000 to \$500,000 by reason of transporting freight at the rate prescribed; would you not suggest some provision or remedy by which, if the court should decide that the Commission had been in error, the railroad could recover back the difference?

Senator McLaurin. There would be this trouble about that: Sup-

pose A makes application to the Commission for a reduction, and the Commission orders that reduction, and the order goes into force; the railroad company during the time that order was in force would have to reduce the freight rates on that commodity not only to the applicant, but to everybody else.

The CHAIRMAN. That is my question. I said that.

Senator McLaurin. Practically, it would deter anybody from making application if he had to give bond to indemnify the railroad company against all loss.

The CHAIRMAN. Not one shipper alone, but every other shipper.

Senator McLaurin. There would be this trouble about that, that although B might have had nothing to do with the litigation between the applicant and the railroad company, he would have to become a bondsman.

The CHAIRMAN. How is the railroad to be protected against hauling freight at a loss of \$400,000 to \$500,000? We do not want to confiscate the railroads.

Senator McLaurin. There would be considerable difficulty about it, but you might require everybody to pay into some fund somewhere the difference between the amount of compensation authorized by the Commission and the amount that the railroad had fixed, and then if the railroad company should win, that goes to the company; but if the company should lose, that would go back to the shippers.

The CHAIRMAN. I will suggest, Senator, that these are questions that we can perhaps discuss better in executive session. I would like to get in print before the committee the ideas of Mr. Bacon on that subject. Now, Mr. Bacon, you say, as I understand, that there is no recourse provided in the bill, and should be none. Is that your position or the position of the organizations you represent?

Senator McLaurin. I ask your pardon, Mr. Chairman. I think your suggestion is the better way.

The CHAIRMAN. I want the ideas of the parties who desire to support the bill and who hold, as I understand, that the railroad under this bill has no recourse and should not have any.

Mr. Bacon. I do not think it should not have any.

The CHAIRMAN. That is a direct answer to the question.

Mr. Bacon. But, so far as I am able to see, it is impracticable to make such provision, and certainly there is no such provision in the bill. It is largely a question of the preponderance of right or of the suffering and hardship. In the nature of the case, one party or the other must suffer some hardship, and the question is who will suffer the more—the railway company or the public.

The CHAIRMAN. That is your position.

Mr. Bacon. Yes.

Senator Dolliver. I find nothing in here that would make the permanent order applicable to anybody else except the complainant. Why should the rates be suspended as to the whole upon an individual complaint.

Mr. Bacon. It changes the rate, and of course that rate is open to all shippers.

Senator Dolliver. There might be some mechanism to make it applicable to the complainant only.

The CHAIRMAN. The Nelson bill does not provide for pooling at all.

Mr. Bacon. No.

The CHAIRMAN. Are you against pooling?

Mr. BACON. The convention which I represent was silent on that subject; expressed no sentiment on the subject. Therefore, as the representative of that convention, I have nothing to say on that point.

Senator FORAKER. That is a very important question. You are a well-informed man, and I, as one member of the committee, would like to have the benefit of your views on that subject.

Mr. BACON. Let me answer the question put by the Chairman.

The CHAIRMAN. You are now going back to the other question?

Mr. BACON. I am answering your question. I am now going on to say that the protection of the carrier lies in the fact that the Commission which has determined this question is a competent body, and has acquired a knowledge of traffic matters and skill in the adjustment of them sufficient to enable it to promulgate a decision which in all probability will stand the test of appeal to the courts, and the cases in which it will not stand that test will be a very small number; consequently the loss entailed upon the carrier will be exceedingly small. On the other hand, without this provision the public is subjected to a continuance for years of this rate, which has been pronounced by a competent body to be wrong, and the whole community is paying hundreds and thousands, possibly millions, of dollars, while the case is being carried through the courts.

So that it seems to me, as a matter of practical expediency, that there can be no question but the right way is to make the order immediately operative and let the carrier take the slight risk which will result in these exceptional cases, rather than to permit the public to be wronged year after year while the cases are pending. The wrong in one instance is comparatively insignificant, while in the other instance it is enormous.

Senator FORAKER. Will you give me the benefit of your views about pooling? That is a very important subject.

The CHAIRMAN. Perhaps the gentleman who is to succeed you, Mr. Bacon, will address himself to that subject.

Senator KEAN. But Senator Foraker has asked for Mr. Bacon's opinion.

Senator FORAKER. I do not want it unless he is willing to give it; I am sure it would be an intelligent one.

Mr. BACON. I will say that I have a definite opinion on that subject, but as chairman of the committee that has prepared this bill, in which there is no provision in regard to it, I feel somewhat embarrassed in stating that opinion.

Senator FORAKER. I do not want you to be embarrassed at all. Subsequently—

Mr. BACON. Mr. Chairman, I would like about two minutes to answer a question by Senator Foraker. He asked what provision there was in the bill that would be effective in relation to the prevention of discrimination. As an answer to that I will read, beginning at the top of page 9 of Senate bill 3575:

Any circuit court of the United States for a district through which any portion of the road of a carrier runs shall, upon petition of the Commission, or of any party interested, enjoin such carrier or its receivers, lessees, trustees, officers, or agents from giving, and a shipper from receiving, with respect to interstate transportation of persons or property subject to the provisions of this act, any concession from the lawfully published rate, or from accepting persons or property for such transportation if a rate has not been lawfully published; and by "concession" is meant the giving of

any rebate or drawback, the rendering of any additional service, or the practicing of any device or contrivance by which a less compensation than that prescribed by the published tariffs is ultimately received, or by which a greater service in any respect than that stated in such tariffs is rendered.

That covers that point.

Senator DOLLIVER. That is the law now, is it not?

Mr. BACON. No; there is no provision of that kind in the present law. But the question has recently appeared before the courts as to whether they can enjoin railroad companies in this way. A temporary injunction has been granted in several cases in Kansas City and Chicago, and we are told authoritatively that it is the opinion of counsel of the various railroad interests that a permanent injunction can not possibly issue. This specifically provides that a permanent injunction may be issued in such cases.

The CHAIRMAN. I believe that we are all in favor of the most drastic provisions in any of these bills that will prevent discriminations or secret rebates. There is no controversy about that. Any suggestion from anybody to make the law stronger than is proposed in either the Nelson bill or the Elkins bill will meet with the favor of the entire committee, I am sure. So on that point there can be no controversy.

Mr. BACON. I want to answer another inquiry by Senator Clapp, in relation to the enforcement of the order of the Commission requiring a differential not greater than 2 cents a hundred on flour as compared with wheat, why that has not been enforced.

Senator CLAPP. No; I did not ask that question.

Mr. BACON. The question was asked by some Senator. The reason is that under the decision of the Supreme Court the Commission has no right to say what change shall be made. Hence the complainants are debarred from going to the courts and asking an order to enforce the order of the Commission.

### STATEMENT OF BERNARD A. ECKHART.

The CHAIRMAN. Will you be kind enough to state whom you represent?

Mr. ECKHART. I represent the Chicago Board of Trade and the Illinois Manufacturers' Association.

The CHAIRMAN. And your business?

Mr. ECKHART. I am in the flour-milling business at Chicago. I will not attempt to discuss the inadequacy of the present interstate-commerce act or the different features of the bills pending before the committee. Those points have been covered largely by Mr. Bacon, and I assume will be discussed by others who have given that branch of the subject considerable attention.

I desire briefly to call your attention to a few important facts in relation to the milling business of this country, and as to how the inability of the Interstate Commerce Commission to enforce its findings affects the millers of the United States.

It may be interesting to state that there are about nine to ten thousand mills in this country, scattered over 33 different States of the Union, and that their annual output is about \$600,000,000. The value of the flour alone produced in these mills is about \$400,000,000, to say nothing of the by-products and the cooperage, bagging, fuel, and

other things consumed. There are mills enough in this country to grind up all the wheat that we raise annually in the course of four or five months.

The difficulty that we have had in the last four or five years has been the freight-rate discrimination practiced by the transportation companies against flour for export in favor of wheat for export.

The CHAIRMAN. By export do you mean to go across the ocean?

Mr. ECKHART. Yes; from the interior of the country to the seaboard, and from there to Europe.

The CHAIRMAN. By discrimination you mean the amount of freight paid for flour over and above what is paid for the transportation of wheat?

Mr. ECKHART. Charging a proportionately higher rate of freight for flour than for grain.

Senator DOLLIVER. Just how is it between Chicago and New York?

Mr. ECKHART. The published rate is about the same, as a rule. But the difficulty we have encountered is that they have made secret and special rates to the grain shippers for carrying wheat that were not made to the millers of the country for flour. In other words, there are instances where they have charged 15 cents a hundred from Chicago to New York for flour, and have carried wheat for about eight or nine cents a hundred, which makes a difference of about twelve to fifteen cents a barrel on flour, thus giving the foreign miller a great advantage over the American miller.

The foreign countries, more especially the United Kingdom, require either our wheat or our flour. They will take our flour, providing the transportation companies do not discriminate against the miller by carrying wheat at a much less rate of freight, or, in other words, make a secret cut rate on wheat for export.

Senator DOLLIVER. Most of the European countries have high tariffs against flour.

Mr. ECKHART. To those countries we do not export flour. We can not.

Senator CARMACK. To what countries do you export most?

Mr. ECKHART. England is the largest buyer of our flour, and Holland comes next.

The American millers can hold their own against the world on an equal basis if the transportation companies cease discriminating against us. We do not enjoy any special privileges, and we have never asked any. We are not a protected industry; we do not need it. But we do feel that the transportation companies should treat us fairly and equitably. We also feel that it would be a great advantage to the transportation companies to carry all of our surplus product in the shape of flour, rather than wheat, because when this cutting of rates is resorted to, as it has been in the past, they get but nominal rates of freight, hardly commensurate with the value, for carrying wheat.

Senator KEAN. Is it not a through rate?

Mr. ECKHART. It is invariably a cut rate.

Senator KEAN. I mean, does it not include ocean transportation?

Mr. ECKHART. Sometimes they give a through bill of lading, but they pay the ocean freight; that is, whatever cut is made is generally made by our own inland lines.

Senator KEAN. By the ocean lines?

Mr. ECKHART. No; by the railroad lines.

The CHAIRMAN. Is it your contention that wheat and flour ought to be made to pay the same rates?

Mr. ECKHART. We contend that it costs no more to carry flour than wheat. That matter was up before the Interstate Commerce Commission two years ago.

Senator DOLLIVER. I understand the published rate is the same for both.

Mr. ECKHART. The published rate is generally the same.

Senator DOLLIVER. Why do you not get an injunction and make them stand together?

Mr. ECKHART. In answer to that question, I will say that the matter was placed by us before the Interstate Commerce Commission, where we showed conclusively by a preponderance of evidence that it did not cost any more to transport flour than wheat, for the reason that the millers invariably fix up their own cars and load them, and when the railroads furnish us large cars we load them to their utmost capacity; whereas, in case of wheat shipment the railway company is obliged to furnish inside car doors and clean and fix up its own cars.

Senator DOLLIVER. What effect would this equality of rates have on the foreign shipment of wheat?

Mr. ECKHART. We would export our surplus in the form of wheat.

Senator DOLLIVER. No wheat would go abroad?

Mr. ECKHART. Very little.

Senator DOLLIVER. How would that leave the wheat raisers of the United States? Would not that leave them in rather intimate relations with the millers?

Mr. ECKHART. No; that would leave them in this position: They prefer to have buyers of wheat the whole year round. The American farmers of to-day are in such a condition that they like to sell their product to competitors. They enjoy marketing their product to the millers, because the millers are located in different sections of the country and are there competing, one against the other, for wheat to grind in their mills.

Senator DOLLIVER. I have heard the matter complained of in our country that competition has been greatly reduced in recent years.

Mr. ECKHART. Well, that may be true to a certain extent; but it is nevertheless true that competition does exist very largely in the wheat-growing States of the United States.

Senator CARMACK. The wheat grower then would find his market entirely with the miller; he would have no market abroad for his wheat?

Mr. ECKHART. Oh, yes; most assuredly. The miller would have to compete with the exporter in the purchase of his wheat from the farmers.

Senator CARMACK. I understand that.

Mr. ECKHART. There would be the same demand for our surplus, and if they could buy cheaper the manufactured article in the markets of the world than they could buy it in the form of wheat, they would certainly buy it in the form of flour.

Senator FORAKER. Can you let us have the benefit of your views as to these pending bills?

Mr. ECKHART. As I stated at the outset, I do not propose to discuss the merits of the bills, for I believe Mr. Bacon and others have given



more attention to the bills than I have, and are therefore more competent to discuss them.

Senator FORAKER. Do you prefer the Nelson bill to any of the others?

Mr. ECKHART. No. So far as I am personally concerned, and so far as the interests I represent are concerned, I am not particular what bill is enacted if there shall be some supervision exercised over the transportation companies. We realize that it is the tendency of the times that consolidation and federation are taking place. We realize, too, that the transportation companies, unless some supervision be exercised by the General Government, can build up one set of men at the expense of another set of men; that they can build up one section of the country at the expense of another section, so that our only hope is in national legislation.

Senator DOLLIVER. We have national legislation now that makes criminal the payment of secret rebates. I will state to you that six suits have been brought by the Interstate Commerce Commission against six lines of railway to enjoin them from any secret departure from their published rates; and, as I understand it, they have entered a court of equity and secured a decree to that effect, which would seem to be a pretty effective remedy for the trouble you complain about.

Senator CARMACK. You have read this bill. What is there in it in the way of more stringent regulations against secret rebates?

Mr. ECKHART. I understand that this bill will correct the defects of the interstate commerce law that have been found to exist against the shipping interests. It was supposed when the original interstate commerce law was enacted that it would cure the evils that then existed, but of course it was in the nature of experimental legislation and in many respects was somewhat crude and imperfect, and the decisions of the courts of the country have shorn it of many of its salient features. I understand that the Nelson bill, if enacted, will remedy some of the defects that have been encountered in the execution of the interstate commerce law.

But what I desired was to call your attention to the difficulties under which a great industry like the milling business is suffering and for which they are asking a remedy.

Senator CARMACK. The whole burden of complaint of the milling industry is against secret rebates, I understand.

Mr. ECKHART. I do not share entirely the views expressed by Mr. Bacon that discriminations in favor of persons are but a trivial matter. I believe that the discriminations practiced by the transportation companies in favor of certain persons against others are destructive of our commercial system, and will ultimately result in the absolute destruction or confiscation of the property of certain people and certain industries. While discrimination has been practiced, and can continue to be practiced, in favor of certain sections against other sections, and while that is a great evil, I believe that the evil of transportation companies giving certain people secret rebates, giving special rates and special privileges, to the exclusion of the public, is detrimental to and destructive of our commercial interests.

Senator CARMACK. The secret rebate of which you complain, however, could not be secret as a rebate in favor of certain individuals against certain other individuals. It is a secret rebate in favor of one class of freight against another class of freight, is it not?

Mr. ECKHART. No. I mean to say that transportation companies have practiced secretly in the past the giving of special rates.

The CHAIRMAN. To individuals?

Mr. ECKHART. To individuals.

Senator CARMACK. As I understand your statement, while through rates for flour and wheat are the same, yet by secret rebates there are differences made?

Mr. ECKHART. Yes.

Senator CARMACK. By that do you mean secret rebates to particular individuals, or is it a general system by which flour is discriminated against?

Mr. ECKHART. That is general. But in discriminating against flour they give certain shippers, located in certain sections of the country, a special rate which is not open even to competitors.

Senator KEAN. For instance, Minneapolis would get a special rate while Chicago would not?

Mr. ECKHART. Chicago could get a special rate and Minneapolis not be able to enjoy it.

Senator CARMACK. What is the cause of this action on the part of the railroads in making this discrimination against flour; what object have they in that?

Mr. ECKHART. Of course I only have a general knowledge; what they tell us. They say, for instance, that one of the transportation companies is out for business; wants to increase its tonnage from a certain section. They go out and get business. Their solicitors want business, and they make special rates. Then another transportation company, finding that the traffic is going over another line, says: "Well, some other fellow is making a special rate; we want business, and we will make a special rate also."

Senator CLAPP. Why does not that apply to flour as well as to wheat?

Mr. ECKHART. That is due, possibly, to this fact, that the railroad companies claim that they can get from 150,000 to 200,000 bushels of wheat to move within a very short space of time, whereas flour will come anyway, because the mills have got to grind, and they will keep in operation, and so they will get that product anyway. That is where they are mistaken, for if they carry the wheat to the seaboard and it goes out of this country as wheat the millers of this country will certainly not be able to grind it into flour, and so it is against their own interest, because they would invariably get the same tonnage at a reasonable freight rate, at the tariff or the published rate. It would go forward because the foreign countries have got to have our surplus and will take it. In that respect I think the transportation companies ought to favor this bill in order to protect themselves against each other.

Senator DOLLIVER. Have you ever received an order from the Interstate Commerce Commission declaring that flour should have the same rate as wheat?

Mr. ECKHART. No. It has said substantially that they believe there should be a small differential, and of course we are willing to abide by that. I think the differential is 2 cents a hundred.

Mr. BACON. Not to exceed 2 cents a hundred.

Mr. ECKHART. Not to exceed 2 cents a hundred. We are perfectly willing to abide by that.

Senator DOLLIVER. On what theory is that based?

Mr. ECKHART. On the theory that the Interstate Commerce Commission, after hearing the evidence, believed that it costs a little more to discharge or unload flour at the other end than wheat. Personally, I believe that the differential established by the Interstate Commerce Commission is a little excessive.

Senator DOLLIVER. Is there not a very substantial difference in the value, by weight, of flour as compared with wheat?

Mr. ECKHART. There is some little difference, but it is not very great.

Senator DOLLIVER. To start with, you have to put the flour in the package, whereas the wheat is shipped in bulk.

Mr. ECKHART. That is true, but the package only costs about 10 cents per barrel.

Senator DOLLIVER. It certainly takes more than a bushel of wheat to produce a bushel of flour.

Mr. ECKHART. Oh, yes; and the labor and the package must be added to the value.

Senator DOLLIVER. I mean there must be more wheat than a bushel to produce a bushel of flour.

Mr. ECKHART. Oh, yes.

Senator DOLLIVER. In other words, the wheat is the raw material?

Mr. ECKHART. Let me see if I can explain that. You can get just as much flour into a car as you can of wheat, so that a 50,000-pound car can be loaded with 50,000 pounds of flour. So they lose nothing in that direction.

Senator FORAKER. How much difference would there be between the value of 50,000 pounds of flour and 50,000 pounds of wheat?

Mr. ECKHART. The difference would probably be—

Senator KEAN. About five times, would it not?

Mr. ECKHART. Oh, no. The difference is possibly 25 cents on the barrel of flour, taking the same weight in wheat. In other words, the value would possibly be from 10 to 12 cents a hundred pounds.

Senator KEAN. That is on 50,000 pounds.

The CHAIRMAN. Is it true that if you could get the same rate on flour and wheat to New York and London the mills of the country would grind all the wheat?

Mr. ECKHART. Yes.

The CHAIRMAN. Then there would not be any wheat to export?

Mr. ECKHART. Very little, certainly.

The CHAIRMAN. Do you think this would be in the interest of the American millers?

Mr. ECKHART. Yes; and in the interest of the American transportation companies and American labor.

The CHAIRMAN. Do you think we could pass laws to regulate those matters?

Mr. ECKHART. No, sir; but I do believe that we can pass laws in this country to exercise supervision over our interstate commerce so as to prevent transportation companies who are common carriers from building up one interest and ruining another interest. What we desire is equality. Of course many of the foreign nations go a great deal further than that. France, for instance, protects its millers by giving them a bounty.

The CHAIRMAN. Is this about what you would like to submit?

Mr. ECKHART. Yes.

Senator CARMACK. I want to ask one question. I understand that the Interstate Commerce Commission have made an order in respect to this matter of differential between wheat and flour, with which I understand you are fairly satisfied.

Mr. ECKHART. Yes.

Senator CARMACK. What is the difficulty about enforcing that order?

Mr. ECKHART. They can not enforce it, they tell me, because they have not the power to enforce their finding.

Senator FORAKER. That is, the Commission can not?

Mr. ECKHART. The Commission can not.

Senator CLAPP. I suggest, Mr. Chairman, that the real issue here is as to what can be accomplished by these bills.

The CHAIRMAN. That is correct.

### STATEMENT OF AARON JONES.

The CHAIRMAN. Please state your residence, your business, and whom you represent.

Mr. JONES. Mr. Chairman, my name is Aaron Jones; my residence is South Bend, Ind.; I am a farmer. I am here as the representative of the National Grange, a farmers' organization composed of an active membership of about 500,000 people, all farmers. This organization is a nonpartisan organization. It has subordinate branches which hold their meetings throughout the States. We have a national organization which is composed of delegates from the various State organizations. I appear before you as chairman of the committee on legislation, and also as master of the National Grange.

This question of interstate commerce is one that the farmers of the United States, irrespective of party affiliations, have a very deep interest in. It is one upon which they have thought more earnestly and deeply than perhaps any other single question. The farmers, as you know, are not a class of men very much given to talking. Yet they feel earnestly upon this question, as it underlies the prosperity of the agricultural classes.

I desire to say that our organization and the farmers generally, so far as I know, have the most friendly feeling for the railroad interests of this country, as well as all the other transportation interests of the country. There is not a particle of prejudice in our minds as against any of the transportation companies of the country. We desire that all these transportation companies should be fairly remunerated for the services that they render to the people. But the growing consolidation of these organizations and the increase of freight rates has impressed us with the fact that the time has come when a power beyond that of the railroads themselves should review the prices that they charge for the transportation of commodities and say what is fair and equitable.

We believe that a commission or a committee having this matter in charge should be composed of men not engaged in the business of transportation, either as shippers or carriers; that they should be men of the broadest information and fairness. We believe that that commission, when appealed to, should examine into all the facts relative to the cost of transportation, and that whatever their findings may be, those findings should be binding upon the shipper and the carrier until

they have been reviewed by a competent court, and affirmed or overruled, as the case may be. This we believe to be equitable and fair.

We are led to this conclusion by the power of the railroad companies to confiscate our property or by excessive charges of freight and passenger take it by the strong hand of the law. State commissions appraise and fix upon a valuation of property that is to be used in the building of a railroad; whatever this commission may find to be the true amount of damages is awarded, and the owner of the real estate has no alternative but to accept the award or to appeal to the court, as the case may be. We believe that is right. We believe that railroads could not be built in this country if the law were otherwise.

Now, if State or national law can create a commission, which commission can fix the price of citizens, property taken for the building of a railroad, and compel them either to accept the amount awarded as damages or to appeal to the court, it seems to me that, when they are shipping the products of their farm to the markets of the world in order to get any benefits from their land, the same rule of action ought to apply.

We believe that the farmer is more interested in this question than any other class of people in this country. Statistics tell us that 60 per cent of the freights upon the railroads of the United States are the products of our farms. Therefore, as farmers, we are vitally interested in this one proposition, and that is equitable charges.

I was present this morning and heard arguments as to differences of rates as between one man and another, and also the question of rebates. It might be said that the farmer would have no particular or direct interest in that. But he has, because if there is a rebate or a lower schedule fixed for one shipper that man gets control, and shuts off competition. We believe that equity and fairness in all trade and business, with an open competitive market, is the only salvation for the American Republic. We believe that if you depart from this great principle and allow the consolidation of great interests to dictate and arbitrarily fix prices, which may be just or unjust, and appeal to the people to stand by them and to transact business upon that plan, it will eventually deprive this Republic of all the liberty it has.

The point that we desire to reach is that every man doing business with a railroad corporation shall receive the same service for the same money, and have the same advantages—one with the other—and that all charges shall be reasonable. That gives everyone an equal opportunity. As the practice has been, and is now, we know that that is not the case.

I was here this morning when one of the committee asked the question if the pending suits would not cover every point that I make upon this subject. If those pending suits are decided in favor of the Government, and the permanent restraining order is issued against the railroads, so far so good. But I want to say that the passage of this bill will simply strengthen the law and make sure the decisions of the courts along the lines of equity, and in my judgment could, therefore, do no harm.

My experience among farmers has been quite considerable. I have come in daily contact with the farmers in all parts of the country, and I have ascertained that the conviction has become fixed in their minds that they ought to have some definite relief in reference to this matter.

What we want is that all the railroad and transportation interests of this country shall be placed upon the same plane with each individual of the Republic; that because they are public carriers engaged in public service their rates should be subject to review by a disinterested tribunal, and that the findings of that tribunal should be operative upon the railroads until they have been reviewed and changed by a competent court.

If you should examine the records of our organization, you would find that in our three or four hundred thousand meetings annually all over this country these matters have been brought up and discussed, and that, with hardly one dissenting voice, they have demanded of the highest legislative body in the world that they be given this kind of protection. You would find upon our records resolutions, passed by our subordinate granges, asking this relief; and I think last year I transmitted petitions for the Cullom bill, signed by at least 100,000 farmers—perhaps 300,000—asking for the passage of that bill, because it covered the very points that I understand are in this bill.

Not only that, but our State granges and our national granges have all directed the legislative committee to do what it could to impress Congress with the importance of this measure.

As a farmer, I want to say that the value of all farm lands depends largely upon the enactment of a law of this kind. Our farms are only valued in proportion to the revenues derived from them. If the power is given to the railroads to discriminate and to make unjust and excessive charges, thus robbing us of the benefits of our lands, it results in actual confiscation. I recollect very well of traveling in Kansas and Missouri when the rate was but 13 cents a hundred for corn from Kansas to New York. I recollect after the great corn crop of 1899 that rate was changed to 23 cents. I do not know whether 13 cents a hundred was a remunerative or a fair price, but I know it was the price fixed by the railroads—for which the railroads carried the corn. If that was a fair price, when the price was raised to 23 cents it was an unjust rate, and it took from the farmers of the country over \$130,000,000 in the value of one crop of corn. Not only the amount we sell but the amount that we have kept at home is to be considered. Every bushel of corn that is sold in any market of this country is based upon what it is worth in the markets of the country.

This is a matter of vital importance. The matter of hay was discussed this morning in the House committee. As it was not discussed here, perhaps I should not refer to that. But, at all events, the change of rates from \$1.50 to \$2.60 for shipping hay from Iowa to the seaboard was absolutely prohibitive and did prevent the shipping of hay. The man who made the speech in the House committee this morning said that since this change in the rates he had not bought a single ton of hay west of the Mississippi River, whereas heretofore he had bought a great deal. That is a matter that affects every ton of hay grown in the great West. The same principle applies to every other product requiring transportation from one part of the country to the other.

I want the Interstate Commerce Commission to have the power, after receiving evidence from the shipper and from the transportation lines, to say what shall be a fair and equitable rate. After taking the evidence in the case, as a fair and equitable tribunal, a disinterested tribunal, I would like for that Commission to have the power to prescribe a fair and equitable rate, and when they have so prescribed it

I want the railroads of this country to obey the order of that Commission until the Commission shall be found by a competent court to have been in error in its finding.

Another point: This morning before this committee the gentleman from Chicago (Mr. Eckhart), who represented the milling interests of the country, was talking about the differences between the export rate on flour and the export rate on wheat, and he said that there were rebates given to such an extent as absolutely made it prohibitory to the shipper of flour, because he could not compete with the shipper of wheat. I want to say, as a farmer representing agriculture, that we are vitally interested in having equity between these two classes of men who buy our products. Why? Because then they become competitors one with the other. You may say that millers may combine and establish prices, and that the farmers are willing to put themselves into their hands to be scalped. I am not a particle afraid of that. Why? Because there is the shipper, who will hold him in check to a certain extent. They are competitors for the trade. I want them to be competitors. It is to our interest that they be competitors, and it is to the interest of the entire people. I believe that our prices the year round will be more uniform for our home people—our men who have established their mills in our localities to grind our wheat giving us a uniform market, and we would thereby get better prices.

There is still another ground, a broader and wider ground; not only are we as farmers interested in it, but every business man in this Republic is also interested in it; and that is that it is to the interest of the farmers of this country to have the mills of the country grind our grain, so that we farmers may have the by-products to feed to our stock, by this means keeping up the fertility of our soil. Otherwise our grain would go to foreign countries and go to maintain the fertility of the farms of Europe. As statistics show, year after year we have been depleting the fertility of our soil by shipping out the grain and its by-products; I mean the bran and shorts and all that stuff derived from our cereals, and which ought to go back to our own soil to be reproduced in fine cattle, in good hogs, and in dairy products, thus inuring to the interest of every man in this country, not merely that of the farmers alone. But if we allow this discrimination to take place, our wheat goes abroad, and that source of fertility is lost to the American farmer; and upon that ground I oppose discriminations.

But the broad ground of equity and fairness is the ground on which we stand. And I want to say as a farmer, I want to say as the master of the National Grange, and I want to say in the interest of the people of the United States that they demand of this Congress that it shall pass a law that will give equity to every business interest and every locality in this broad land of ours in the matter of transportation. I want to say also that in my humble judgment the people of this Republic have got their eyes upon this legislation and are determined that they will watch and see to it that they have that kind of legislation.

I want to say that all the railroads of this country ought to be willing to have a disinterested tribunal to review all their acts, to see that to every man is meted out exact justice, exact fairness; to see that the schedules are right and reasonable.

I can not imagine a single objection to the passage of this bill. I believe that Congress, in justice to the American people, in justice to the farmers of this country, ought to see to it that if they have a

hundred bushels of corn or wheat to sell or ship to the seaboard, or a single firkin of butter to ship, or a single head of cattle, that they be placed upon an equitable basis, the poor with the rich. I believe that that is the only safety, the only road that leads this Republic to that freedom of all the people which is the incentive to go out and labor.

I base my argument upon the equity of this case. If these bills do not cover the ground, and you understand now fully the purposes I have in view, then I hope the wisdom of this committee will make such changes as in your judgment will serve to carry out these purposes. I believe that one of these bills, the Nelson bill (S. 3575), will fully carry out that purpose, will enlarge the powers and duties of the Interstate Commerce Commission, and secure fairness and equity in transportation.

The CHAIRMAN. I may say that we all agree that we should take all proper steps that we can, and especially as regards secret rebates. On that point I do not think there can be any difference of opinion, either in the committee or in Congress. Everybody is committed to that. We should like to find a remedy and have the law enforced. As to these particular bills, however, we should like to hear from you.

Mr. JONES. May I ask you this question, Mr. Chairman: Are you in favor of submitting the railroad schedules to a disinterested tribunal and compelling the railroad companies to obey that disinterested decision?

The CHAIRMAN. I think both these bills allow that; one of them, I know, allows the Commission, upon complaint, to change the rate. As to pooling, the Commission is to have exclusive jurisdiction over agreements and over every rate and every classification. I am willing to go that far.

Mr. JONES. That is right.

The CHAIRMAN. Here are two questions: Shall we put in the hands of the Commission the power to change the rate? That is the first question. Secondly, shall we allow the railroads to pool under absolute restriction on the part of the Commission to control all contracts for pooling, or to reject in whole or in part? As to discrimination, that is wicked, unrighteous, unjustifiable, and robbery.

Mr. JONES. As to the first question, yes. And all pooling contracts must be approved by the Interstate Commerce Commission before going into effect.

#### STATEMENT OF GEORGE F. MEAD.

The CHAIRMAN. Please state your business and whom you represent.

Mr. MEAD. I am engaged in the produce commission business. I represent at this hearing three large business organizations. First is the National League of Commission Merchants of the United States, having constituent bodies in twenty-three or twenty-four cities, and which, at its national convention held in Philadelphia last January, passed resolutions asking Congress to give the Interstate Commerce Commission the requisite power to enforce its findings. The second organization is the Boston Fruit and Produce Exchange, composed of 350 firms and over 600 members, engaged exclusively in the butter, cheese, eggs, provisions, and fruit business. The third is the Massachusetts State Board of Trade, composed of 41 different State organizations throughout Massachusetts.



Everyone of these business organizations has considered this matter. One of them has indorsed specifically the Nelson-Corliss bill, believing that the provisions of that bill will accomplish what they desire. The other two ask generally that Congress shall give whatever power may be necessary to the Commission to enforce its findings, so that it shall be a benefit to the business interests of the country.

We in Boston had an experience with the Interstate Commerce Commission in 1890. We brought a case before the Commission. An exhaustive hearing was had, lasting three or four days, with the final arguments heard here in Washington. The result of that hearing was that the Commission found entirely in our favor—that the rates were exorbitant and oppressive. But the fact that the Commission had not the power to enforce its own findings rendered that decision utterly useless to us. The railroads absolutely refused to abide by the conclusions of the Commission, so that, so far as any practical benefit to us from that decision was concerned, we received none, as the railroads would not abide by it.

So, Mr. Chairman, believing that the business interests of the country demand just this power to be given to the Commission, not primarily to fix the rates, but, after a full and fair investigation, if they find the rates unjust and oppressive, we come to this committee asking that some power be given so that those rates may be in force and in vogue pending revision of the Commission's order by the circuit court or by the Supreme Court.

I notice that the chairman of the committee has a bill here that I have not studied. I have been over the provisions of the Nelson-Corliss bill, and we think that that would meet the necessities of the business community.

If pooling is a distinct feature of the other bill, and if it is to be under the supervision of the Interstate Commerce Commission, I should say that, in my judgment, that ought to be the system.

The CHAIRMAN. That provision is just as strong as it could be made by very able lawyers to put that power in the hands of the Commission. The bill known as the Elkins bill gives the Commission the right and power in a similar case to determine whether the rate is reasonable or not, and to fix the rate as well.

Senator CLAPP. In the Elkins bill the court, on application, being satisfied that the case is one which should call for such a proceeding, may make an order that the decision of the Commission stand in effect pending appeal. Under the Nelson bill it is provided that the decision of the Commission shall stand unless the court makes an order suspending it. That is the practical difference between the two bills—with the pooling clause added to the Elkins bill.

The CHAIRMAN. As to the supervision by the Interstate Commerce Commission, I have made it still stronger—saying that they shall have absolute control in whole or in part of every classification and agreement, and that the agreement shall not take effect until they say so.

Mr. MEAD. Two of the organizations I represent ask for such powers for the Commission as the wisdom of the committee may deem wise to enable the Commission to carry out the provisions of the law—that they may have power to enforce their own orders. We feel now very much as a criminal feels who is brought into court when all the evidence points to his guilt, and where the judge may say, "If you are willing to take a year's sentence, the law will be justified; but I have no power to enforce my decision." Certainly, business men are loath

to bring cases and go to the extent of preparing them before the Commission when they know in advance that the railroads, if the decision is against them, will not carry out the orders of the Commission. That keeps them from it.

The other provision, as to rebates and discriminations, has already been so well covered by those who have preceded me that perhaps I should say nothing about it, except that I believe that the business interests of the country feel to-day as they never have felt before regarding that injustice, because that is driving ordinary business men to the wall very rapidly.

Senator CLAPP. As to both bills, if anybody can suggest anything which will provide a more specific remedy, I am sure this committee will jump at it.

Mr. MEAD. I will not say anything along that line, then.

The CHAIRMAN. Senator Clapp is a good lawyer, and if he can make it stronger he will do so.

Mr. MEAD. Congress has already assumed a limited supervision of the railroads, and we believe that work ought to be carried to a conclusion. Monopoly does not control and can not control public service corporations, as we believe that in the end one company will be bought by another, to the disadvantage of the public. The fact is, as stated by the Commission in its report for 1900, that the matter of rates decides very largely who shall do the business and where it shall be done, and we think that, inasmuch as Congress exercises a limited supervision over public service corporations, it ought to exercise full control over them. If the provisions of either of these bills should become law, we feel that it will then put the business men of the country upon an equality. As it is at the present time, the ordinary business man has no show against those great combinations that are enabled to obtain concessions and rebates which give them the power to drive the ordinary competitor to the wall. It seems to me, Mr. Chairman, therefore, that this committee should determine to recommend the provisions of one bill, or an amalgamation of the two.

The CHAIRMAN. Whatever is best in both we are going to try to put into whatever we recommend.

Mr. MEAD. Then I do not think I will take any more time.

Senator CLAPP. Assuming that this provision for pooling puts it completely in the hands of the Commission, I think the committee would like your view as to that policy.

Mr. MEAD. I understand the Nelson-Corliss bill provides that where there is no through rate, and the railroads can not agree upon one, then the Commission are given power to fix it.

Senator CLAPP. That would only be in a case where there was a complaint and after investigation.

Mr. MEAD. Yes.

The CHAIRMAN. The other bill gives the right to pool. A great many railroads are opposed to that. If you have that rate made public, and in the hands of the Commission, then rebates are almost impossible.

Senator KEAN. There is not a railroad west of the Mississippi River that wants pooling.

The CHAIRMAN. No.

Mr. JONES. Senator Elkins, I see that your bill provides that the findings shall not go into effect until after the order of the court.

What is the reason for not letting it take effect the same as is provided for in the other bill?

The CHAIRMAN. My bill says that if, upon full investigation, after a hearing by the circuit judge, the judge finds the case flagrant he can change the rate. The bill leaves the evidence to the court. In accordance with the reasons stated this morning by Mr. Bacon, the rate could be changed if it was found to be wrong, the changed rate to have two years' operation, during which time the railroad might have a loss of \$400,000, for which it would have no recourse under these bills, because if it had recourse against the shipper the shipper could not collect it from the consumer. Whereas if the court finds against the railroad the other party has the right to recover, and can recover from the railroad. One is certain always of securing justice if the rate is wrong—the judge sitting there can, under my bill, change it.

Mr. JONES. So he can under the other.

The CHAIRMAN. There is very little difference between the two bills, I can assure you.

Senator KEAN. In the one case you are sentenced first and hanged afterwards and in the other case you are hanged first.

Mr. MEAD. I do not like to answer these hypothetical questions, Mr. Chairman, without having given thought to the matter. I have got myself in trouble several times in that way. It would seem to me, however, that we would rather favor that feature of the bill that allows the Interstate Commerce Commission to fix the rate.

The CHAIRMAN. And makes it operative at once.

Mr. MEAD. Yes. That would reverse the present order of things, but it seems to me that the business interests would be better satisfied with that version.

Mr. JONES. I think all these cases are emergency cases and ought to be tried at once, and that a prompt decision should follow; but if it be put in the shape Senator Elkins has it, of course the corporation should have, as it is usually understood to have, more power than the other fellow, and it might be a long time before any result would follow the decision of the court.

The CHAIRMAN. In some localities, if you give a chance to the jury, the corporation has no show whatever. I am trying to see both sides of this case. I have been on both sides; I know about railroads and their interests as well as about the interests of the other side. I do not want to say what we are going to do here, but it is our duty to look out for the interests of both sides of the question.

Senator CLAPP. I think we should give the Commission power to enforce its orders.

The CHAIRMAN. If we can break up rebates and stop absorption by giving the pooling privilege, then we shall have made a great step. If the court finds that the rate is too high, he should have the power to fix the rate right there and make it operative at that moment, because the case has been flagrant.

Mr. BACON. And when the Commission is in error somebody who is competent should pass upon that error, and that is the court.

Mr. MEAD. The business men, from their expressions that I have heard in the last two or three years, as stated in their organizations, feel that the Commission under present conditions might as well be abolished, and that the cost of its maintenance, approximating some \$200,000 a year, might just as well be saved.

## STATEMENT OF JOHN B. DAISH.

The CHAIRMAN. Please state your residence and whom you represent.

Mr. DAISH. I represent the National Hay Association, an organization of about 700 men. The president of the association, Mr. George S. Bridge, resides in Chicago; he appointed me chairman of the special committee to appear on this occasion. My residence is Washington.

Confining myself almost entirely to the two objects that have been outlined by you, Mr. Chairman, the first question has a dual aspect. We have heard from several of the gentlemen as to what the business men want, and what seems to the shipper and the farmer the best thing to do under the circumstances. We are confronted with a situation.

The law passed in 1887 by reason of decisions of the Supreme Court in 1897 became practically ineffective, to a certain degree at least. We have stood under that decision five years, the decision having been rendered in the case of the Interstate Commerce Commission *v.* the Cincinnati, New Orleans and Texas Pacific Railway upon an act on the statute books which created a body whose powers were supposed to be enforceable, and yet by reason of that decision the statute was rendered ineffective. That decision says in effect to the commission: "You can sit here, but you can not exercise the powers which you have been exercising under that statute." That is where we stand to-day.

The object of these bills, whether the Nelson-Corliss bill or the Elkins bill, is to remedy the existing situation. We have heard from the business side of the question, and so it is not necessary to go into that in any great detail.

We have recently brought a complaint before the Interstate Commerce Commission alleging that because it changed the freight rate on hay, it made that rate unreasonable and unjust. That case is still pending.

Objection has been made in certain quarters to the constitutional features of any bill which provides that the Interstate Commerce Commission may make a rate for the future. It is conceded, I believe, that the power to prescribe a rate lies in the halls of this Congress.

Senator CLAPP. Is it seriously contended that Congress can not delegate that authority?

Mr. DAISH. No, sir. There seems to be no question raised about the right of Congress to delegate authority, but the question has been asked of me, for opinion, stating in substance that a railroad commission or the Interstate Commerce Commission can say that a rate of 30 cents a hundred from Chicago to New York on hay in car lots is unreasonable and unjust, and then can go farther and say to the carrier that "25 cents a hundred is a reasonable and just rate, and we therefore order and decree that you shall not charge more than 25 cents a hundred for this particular service." It is the latter portion of that which is attacked.

The CHAIRMAN. This bill gives that power precisely.

Mr. DAISH. Precisely.

The CHAIRMAN. That power was taken away from the Commission by the Supreme Court because Congress had not given the power. So we propose in both bills to give that power.

Mr. DAISH. That is true.

I wish to cite, for the purposes of record more than anything else, a couple of cases analagous to this, wherein the Supreme Court has decided that such power can be given to a railroad commission. The power given in these bills is not primarily to fix the rate, but to say that a certain rate is unjust, unreasonable, and exorbitant.

A question was asked this morning concerning the adequacy of the present law, whether the power is within the law itself could be enforced, and reference was made to injunction proceedings. We have read considerably in the press concerning these injunction proceedings. The injunction, as you all know, was a temporary injunction; and if the press correctly reports Judge Groscup, he is reported to have said practically as follows: that "were the objection on behalf of the defendants to this proceeding, I should be very careful in granting that preliminary injunction." That injunction, if I recollect rightly, is to be in force and effect until the final hearing, which is set for the 23d of June. The Government, I understand, rests its case largely upon the Debs case. It has become my duty recently to reread that Debs case; and with the little legal light that has been given me by instruction of professors at various times, and with my little experience, I must say frankly that I can not see the application of the case in re Debs to the rate for interstate traffic. That case was for an obstruction of a public highway dealing with interstate commerce, and that obstruction was held by the United States Supreme Court to be a nuisance.

While the ordinary business man says that it is a "nuisance" for him to pay an excessive rate, it is not a legal nuisance. The fact that it is impossible for me, as a business man, to make shipment of various commodities on account of high freight rates does not constitute a legal nuisance. While I am not a prophet, it seems to me that sooner or later that injunction must be dissolved. As I see it, only some such legislation as is proposed in one of these bills can remedy the existing difficulty with which we are confronted.

Mr. BACON. That is the Nelson bill.

Mr. DAISH. I am referring to either bill at the moment. Either one will cover the point. I shall very soon come to the consideration of the differences between the two bills. The main difference, I take it, between the two bills, is the question of pooling.

The CHAIRMAN. That is the substantial difference.

Mr. DAISH. My instructions in that respect are practically these: That the National Hay Association as an association—we have had no vote of the membership—does not object to a regulated pool, a pool under the supervision, direction, or authority of a competent body.

The CHAIRMAN. Would you name the Interstate Commerce Commission? We can not name any other just now.

Mr. DAISH. We think that Commission is competent to take care of it. We think the members of that Commission are broad minded enough to look out for the interests of the public as well as for the interests of the carriers who would be affected by these pooling arrangements. It is immaterial whether a pooling arrangement is a pooling of earnings or a pooling of tonnage.

I have now given my instructions as an official representative. Personally, as a student of transportation matters, I am an ardent advocate of pooling, on two grounds. Not pooling generally, but regulated pooling. First, it recognizes that movement which is going on

to-day in all classes and lines of business—a movement toward aggregation of capital. Boots and shoes are made in large factories. They are not made by a single individual man, as they were made twenty-five years ago. There is a tendency in the same direction on the part of the railroads. It is called “community of interest” for want of a better term. Legalized supervision of pooling will not only accelerate the movement of the pendulum in that respect, in my judgment, but it will help to secure the greater and better interests of all parties concerned.

The history of the pool which existed prior to 1887 in the Southern States without doubt shows that not only were freight rates less, that the service was equally as good, and that no one was injured, but that on the whole the shippers and carriers were alike benefited under that arrangement.

The CHAIRMAN. That was pooling, Mr. Daish, without the supervision of a commission.

Mr. DAISH. I was just coming to that. It was an unregulated pool, if I may use the term. I am very fond of using the term “regulate” in this connection, because it is the word that is used in the Constitution. You might call that an *ex parte* pool. Yet no one seemed to object; no one raised his hand and said, “You are squeezing me.” At least, if such objections there were, I have not heard of them.

Take the case of the pool of individual carriers, competent railway people versed in transportation matters; bring a case before them where one party says the rate is apparently right, and the opposite party says that it is apparently wrong; where one party says if the pool rate goes into effect it will injure a certain trade, a certain locality, or a certain individual engaged in a particular trade, one who is situated slightly differently from some other person; let that body give the case careful thought, and it seems to me that pooling will not only be favored but advocated.

I have given my personal views on the subject of pooling; and while, perhaps, I have stated the case more strongly than the hay association would care to have me do in my representative capacity, yet I earnestly believe what I have said concerning pools.

There is one other difference, I take it, between the Nelson-Corliss bill and the Elkins bill, and that is the force and effect to be given to the decrees of the Commission after hearing before them and pending appeal. Suppose, for example, that it will be two or three years before you get a given case to the Supreme Court of the United States; in the Nelson-Corliss bill, unless the decree should be manifestly wrong, so wrong that the circuit judge could see in an instant that the Commission had made a serious error on the facts or the law—unless that be the case, that decree shall be in force and effect until the Supreme Court of the United States reverses or affirms it.

Senator CLAPP. On appeal to the Supreme Court, the court is not authorized to suspend the operation of the order of the Commission.

Mr. DAISH. The Supreme Court can not suspend it?

Senator CLAPP. No.

Mr. DAISH. But after the decree, there are two ways of changing it—one is that the Commission itself shall modify the decree; whereas by the Nelson-Corliss bill the circuit judge alone has power to suspend the operation of the decree.

Senator CLAPP. If the circuit judge were vested with power to sus-

pend the decree, what would you say as to giving the Supreme Court the same power on appeal from the circuit court?

Mr. DAISH. In all right and justice, manifestly I should say the Supreme Court, being the appellate body, and there being no review of its decision, might well be invested with authority to make the change upon proper showing.

SENATOR CLAPP. If the circuit court suspended the order, then it would remain suspended until ordered back into effect by the circuit court.

Mr. JONES. By the Supreme Court?

Senator CLAPP. No; by the circuit court. If the circuit court sustains the order, then the order would be in effect pending appeal to the Supreme Court; and, there being no power in the Supreme Court to suspend it, the circuit court in the first instance could have suspended it when it heard the case.

Mr. JONES. The Supreme Court certainly ought to have that power as well as the circuit court, in my opinion, if they find that it is not just and right.

Mr. BACON. One objection to that is the long delay in adjudicating the case. The carriers avail themselves of every possible means of protracting litigation.

Senator CLAPP. You do not understand the point. This bill, called the Nelson bill, provides that on an appeal to the circuit court the circuit court may, if it deems it wise, suspend the operation of the order of the Commission, provided there was a proper case of complaint and the Commission found that the law was plainly violated. While this same law gives an appeal to the Supreme Court, yet it does not give the Supreme Court that same power which the circuit court has in a given case to suspend the operation of the order of the Commission.

Mr. BACON. That is just as I understand it.

Senator CLAPP. If one court has that power, why should not the other and higher court have it?

Mr. BACON. The objection is that it affords still further opportunity for the suspension of this order which has been found by a competent and skilled body to be necessary in order to do justice.

Senator CLAPP. Then why not give it in the first instance?

Mr. BACON. As a check upon the Commission.

Senator CLAPP. Surely the Supreme Court is as safe to be intrusted with discretionary power to suspend or enforce an order as is the circuit court.

Mr. BACON. But after the circuit court has confirmed the order of the Commission it would seem as if the carrier were sufficiently protected. It would take probably a year to reach the case if carried to the Supreme Court, and it may be delayed a year or two longer by motions and arguments and the like, and then there would be two or three years of additional delay, during which time this unjust rate, which has been so found by a competent body and confirmed by the circuit court, is in effect, and the public must suffer until the final decision is reached.

Senator CLAPP. If you vest the circuit court with power to suspend the order of the Interstate Commerce Commission, it seems a forced construction not to give as safe a tribunal as the Supreme Court that same discretionary power.

Mr. DAISH. To amplify the point a little, suppose the circuit court suspends the order; that would place the traffic back on the higher rate.

The CHAIRMAN. Or the rate made by the railroad.

Mr. DAISH. Yes; we may use that term, presuming it means an unreasonable rate. That puts the traffic back to the railroad rate. As representing a shipper, I should certainly want to apply at once to the Supreme Court of the United States and say to that court that this is so wrong, that the circuit court of the United States has so sadly missed the mark, and that the Commission were so completely right, that I want you, pending full argument, to say that the Commission was right when it determined that the rate was unreasonable and unjust. On the other hand, if the circuit court does not suspend the order, then the carrier, who on appeal should certainly be allowed to have his day in court, could say to the Supreme Court: "The circuit court is wrong, the Interstate Commerce Commission is wrong, and without looking at these papers that have been filed against us, we want you to suspend this order pending proceedings." It seems to me as fair for the one as for the other.

The CHAIRMAN. The Elkins bill provides that the Supreme Court may do it.

Mr. DAISH. If by application in the nature of a petition, or by any interlocutory proceeding, you allow one party that right before the circuit court, then allow both parties the same right before the Supreme Court, because the circuit court may do either one way or the other.

There is another difference between the two bills, and that is as to the length of time that the order of the Commission shall be in force and effect—the difference between one year and two years. For some reasons I am rather inclined personally to favor the one year on certain classes of commodities. I recall distinctly one of the earlier cases before the Commission, dealing with transportation rates on wheat from Oregon to Washington. The order in that case was practically this: That on and after the 21st day of December until the end of the present shipping season—which I think was the 21st of June—it shall be unlawful for the carrier to charge a greater rate than a specified amount. I think Mr. Jones will bear me out that if these orders or decrees could be made to correspond to certain harvest times it would be of advantage.

On the other hand, it may be said that a year is too short a time in which to try the particular rate. Or, again, it may be said that within two years we may have serious business conditions which would practically necessitate asking that the rate be changed.

But I take it that under either the Nelson-Corliss or the Elkins bill, at any time pending the decree, upon the assumption that the carriers obey the order, at any time within a year or two application might be made by the carrier or by the shipper for a modification of the decree. If, for instance, the price of steel rails should go up, or if we should have a panic and the price of steel rails should go down, freights were hard to move, nobody wants anything, and you wish to raise or to lower the rate, let the power be vested in the Commission that they may increase, or allow the carrier to increase the rate, as the case may be.

Mr. JONES. That is in both bills now.

Mr. DAISH. Yes; but the difference is the difference between one year and two years. However, I do not know that the time is mate-



rial, because the Commission has been given the power in both bills to change or modify the order, so that they may say that, upon a hearing or a rehearing of the case and upon a consideration of new evidence, some other fact has entered into the case, and so they may conclude to modify the order a little.

It seems to me that not only do we want legislation, but we want legislation along one of the lines, either of the Nelson bill or of the Elkins bill. There is no great amount of difference in them in substance.

I appreciate this: That the commercial interests of the country when you come to the subject of pooling, a great number of them consider it a dangerous thing. The word "pool" seems to the minds of some people to mean a great big ghost, something that will hit you when you are not looking. I do not want to charge those people with lack of properly investigating transportation matters, but concerning them it is a word which either in itself, or as it is the result of a pool, has done in the past serious injury to no one. As I said before, it is in the line of aggregation of capital; it is in the line of the regulation of things, setting them in order. But I will say, frankly, that it is considered by a great many people to be objectionable, because their argument to me is that to give the carriers the power to pool would give them such power as would enable them not only to dominate the Commission but dominate the power that created that Commission; and on those lines they have argued to me that a pool is a dangerous thing.

I have not gone very fully into the subject of our grievances, because that has been thrashed over this morning. I think the committee thoroughly understand the question of rebates and discriminations as it has been outlined. Our case was a little different from most cases. Our case was a discrimination, not against persons or localities, but against a particular commodity. If the committee desire, I can prepare for filing in this record, on behalf of the National Hay Association, something of that kind.

The CHAIRMAN. All right; you can do that, if you like.

Mr. DAISH. I have prepared a brief upon the constitutionality, not of any one of these proposed measures, but upon the power of Congress over the Interstate Commerce Commission, which will be filed if you desire.

The CHAIRMAN. Is it in print?

Mr. DAISH. It is in print.

The CHAIRMAN. Very well. You may file it.

Following is the brief referred to:

#### POWER OF CONGRESS OVER INTERSTATE COMMERCE.

Congress has power to constitute tribunals inferior to the Supreme Court. (Cons. U. S., section 8, clause 9.)

To regulate commerce with foreign nations and among the several States and with the Indian tribes. (Cons. U. S., section 8, clause 3, article I.)

The making and fixing of rates is a legislative, and not a judicial, function; and the decisions are uniform in declaring that statutes creating railroad commissions, and giving them the power to make and fix rates, are not unconstitutional as delegating a legislative power which belongs only to the legislature itself. (8 Am. and Eng. Ency. of Law, 911; *Chicago & N. W. R. Co. v. Dey*, 4 Ry. & Corp. L. J., 465, 35 Fed. Rep., 866, 2 Inters. Com. Rep., 325, 1 L. R. A., 744; *Granger Cases*, 94 U. S., 113-187, 24 L. ed., 77-97; *State ex rel. Railroad & Warehouse Commission v. Chicago, M. & St. P. R. Co.*, 38 Minn., 281, 37 N. W., 782; *State ex rel. Board of Transportation v. Fremont, E. & M. Valley R. Co.*, 22 Neb., 313, 35 N. W., 118, 23 Neb. 117,

36 N. W., 308; *Tilley v. Savannah, F. & W. R. Co.*, 5 Fed. Rep., 641; *Georgia R. Co. v. Smith*, 70 Ga., 694; *New York & N. E. R. Co. v. Bristol*, 151 U. S., 556, 38 L. ed., 269; *Reagan v. Farmers' Loan & T. Co.*, 154 U. S., 362, 38 L. ed., 1014, 4 Inters. Com. Rep., 560, and cases quoted; *Ames v. Union P. R. Co.*, 64 Fed. Rep., 165, 4 Inters. Com. Rep., 835; *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479, 42 L. ed., 243; *Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 197, 40 L. ed., 940; *Smyth v. Ames*, 169 U. S., 466, 42 L. ed., 819).

When the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others. (*Johnson v. Towseley*, 13 Wall., 72, 20 L. ed., 485.)

The legislature's determination, either directly or indirectly, of what is reasonable, is conclusive, subject only to charter rights and to the fact that the rates established will give some compensation to the carrier. (*Atty. Gen. v. Old Colony R. Co.*, 160 Mass., 62, 22 L. R. A., 112; *Chicago & N. W. R. Co. v. Dey*, 35 Fed. Rep., 866, 2 Inters. Com. Rep., 325, 1 L. R. A., 744.)

The power to regulate is to prescribe the rule by which the commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. If, as has already been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States. (*Gibbons v. Ogden*, 9 Wheat., 1, 197, 6 L. ed., 23, 70.)

It is obvious that the Government, in regulating commerce with foreign nations and among the States, may use means that may also be employed by a State in the exercise of its acknowledged powers—that, for example, of regulating commerce within a State. (*Gibbons v. Ogden*, 9 Wheat., 204, 6 L. ed., 72.)

The power to regulate commerce \* \* \* amounts to nothing more than a power to limit and restrain it at pleasure. (*Gibbons v. Ogden*, 9 Wheat., 227, 6 L. ed., 77.)

It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which induced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce arising among the States. (*Brown v. Maryland*, 12 Wheat., 446; 6 L. ed., 688.)

The power to regulate commerce includes that of punishing all offenses against commerce. (*United States v. Combs*, 12 Pet., 72; 9 L. ed., 1004.)

The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality among the several States as to commercial rights, and to prevent unjust and invidious distinctions which local jealousies or local and partial interests might be disposed to introduce and maintain. (*Veazie v. Moor*, 14 How., 574; 14 L. ed., 547.)

Commerce is a term of the largest import. \* \* \* The power to regulate it embraces all the instruments by which such commerce may be conducted. (*Welton v. Missouri*, 91 U. S., 280; 23 L. ed., 349.)

The power conferred upon Congress to regulate commerce with foreign nations and among the several States is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the new developments of time and of circumstances. It was intended for the government of the business to which it relates at all times and under all circumstances; and it is not only the right, but the duty, of Congress to take care that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation. (*Pensacola Teleg. Co. v. Western U. Teleg. Co.*, 96 U. S., 9; 24 L. ed., 710.)

The power to regulate that commerce, \* \* \* vested in Congress, is the power to prescribe the rules by which it shall be governed; that is, the conditions upon which it shall be conducted. \* \* \* The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. (*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 203; 29 L. ed., 161; 1 Inters. Com. Rep., 382.)

When a commodity has begun to move as an article of trade from one State to

another, commerce in that commodity between the States has commenced. (The Daniel Ball, 10 Wall., 565, *sub nom.*; The Daniel Ball v. United States; 19 L. ed., 1002.)

But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. (Coe v. Errol, 116 U. S., 517; 29 L. ed., 715.)

This species of legislation is one which must be, if established at all, of a general and national character. (Wabash, St. L. and P. R. Co. v. Illinois, 118 U. S., 577; 30 L. ed., 251.)

For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. (Mobile County v. Kimball, 102 U. S., 691; 26 L. ed., 238.)

The power to regulate commerce embraces a vast field, containing not only many but exceedingly various subjects quite unlike in their nature. (Cooley v. Philadelphia Port Wardens, 12 How., 299, 13 L. ed., 996.)

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. (Brown v. Houston, 114 U. S., 622, 29 L. ed., 257.)

The uses of railroad corporations are public, and therefore they are subject to legislative control in all respects necessary to protect the public against danger, injustice, and oppression. (New York & N. E. R. Co. v. Bristol, 151 U. S., 556, 38 L. ed., 269.)

Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several States is to be governed, and may, in its discretion, employ any appropriate means not forbidden by the Constitution to carry into effect and accomplish the objects of a power given to it by the Constitution. (Interstate Commerce Commission v. Brimson, 154 U. S., 447, 38 L. ed., 1047, 4 Inters. Com. Rep., 545.)

The making and fixing of rates by either a legislature directly or by a commission do not work a deprivation of property without due process of law. (Munn v. Illinois, 94 U. S., 113, 24 L. ed., 77; Davidson v. New Orleans, 96 U. S., 97, 24 L. ed., 616; Stone v. Farmers' Loan & T. Co., 116 U. S., 307, 29 L. ed., 636; Dow v. Beidelman, 125 U. S., 680, 31 L. ed., 841, 2 Inters. Com. Rep., 56; Minneapolis & St. L. R. Co. v. Beckwith, 129 U. S., 26, 32 L. ed., 585, and cases cited; Budd v. New York, 143 U. S., 517, 36 L. ed., 247, 4 Inters. Com. Rep., 45; New York & N. E. R. Co. v. Bristol, 151 U. S., 556, 38 L. ed., 269; Reagan v. Farmers' Loan & T. Co., 154 U. S., 362, 38 L. ed., 1014, 4 Inters. Com. Rep., 560.)

The State does not lose the right to fix the price because an individual voluntarily undertakes to do the (public) work. (Budd v. New York, 143 U. S., 517, 36 L. ed., 247, 4 Inters. Com. Rep., 45.)

The Nebraska statute fixing maximum rates is not obnoxious to the fourteenth amendment. (Ames v. Union P. R. Co., 64 Fed. Rep., 165, 4 Inters. Com. Rep., 835.)

The compelling of railway companies to comply with the order of railroad commissioners regulating rates is due process of law. (8 Am. & Eng. Enc. of Law, 911; Chicago, M. & St. P. R. Co. v. Becker, 32 Fed. Rep., 849; Louisville & N. R. Co. v. Railroad Commission, 19 Fed. Rep., 679, 16 Am. & Eng. R. Cas., 1; Railroad Comrs. v. Oregon R. & Nav. Co., 17 Or., 65, 2 L. R. A., 195, 35 Am. & Eng. R. Cas., 542; State ex rel. Railroad & Warehouse Commission v. Chicago, M. & St. P. R. Co., 38 Minn., 281, 37 N. W., 782; Stone v. Natchez, J. & C. R. Co., 62 Miss., 646; Stone v. Farmers' Loan & T. Co., 116 U. S., 307, 29 L. ed., 636; State ex rel. Board of Transportation v. Fremont, E. & M. Valley R. Co., 22 Neb., 313, 32 Am. & Eng. R. Cas., 426; People v. New York, L. E. & W. R. Co., 104 N. Y., 58; State v. New Haven & N. Ry. Co., 37 Conn., 153.)

The principal objects of the interstate-commerce act were to secure just and reasonable charges for transportation. \* \* \* (Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S., 263, 36 L. ed., 699, 4 Inters. Com. Rep., 92.)

It is difficult to perceive how the power to fix and regulate the charges for such transportation can be considered in any other light than that of a power to regulate commerce. (Illinois C. R. Co. v. Stone, 20 Fed. Rep., 468.)

It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish, and to descend to the most minute directions, if it shall be deemed advisable. (Cooley, Const. Lim., 732, quoted with approval by Mr. Justice Field in the case of Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196, 29 L. ed., 158, 1 Inters. Com. Rep., 382.)

That this power to regulate by fixing charges for interstate transportation is vested solely in Congress by Article I, section 8, paragraph 3, of the Constitution of the

United States, is, in my opinion, equally well settled by numerous decisions of the Supreme Court of the United States. (*Mobile & O. R. Co. v. Sessions*, 28 Fed. Rep., 592.)

Several of the State statutes, under State constitutions containing nearly identical provisions on the subject as the Federal Constitution, allowing State railroad commissions to make and fix railway rates for such States, which said rates were to be operative until set aside by the courts, have been upheld as valid and constitutional by the United States Supreme Court. (See *Pensacola & A. R. Co. v. State* (Fla.), 3 L. R. A., 661, with extensive notes to that case and notes to *Winchester & L. Turnp Road Co. v. Croxton* (Ky.), 33 L. R. A., 177.)

This Federal Commission has assigned to it the duties and performs for the United States in respect to that interstate commerce committed by the Constitution to the exclusive care and jurisdiction of Congress the same functions which State commissioners exercise in respect to local or purely internal commerce, over which the States appointing them have exclusive control. Their validity in their respective spheres of operation stands upon the same footing. The validity of State commissions invested with powers as ample and large as those conferred upon the Federal Commission has not been successfully questioned when limited to that local or internal commerce over which the States have exclusive jurisdiction, and no valid reason is seen for doubting or questioning the authority of Congress, under its sovereign and exclusive power, to regulate commerce among the several States, to create like commissions for the purpose of supervising, investigating, and reporting upon matters or complaints connected with or growing out of interstate commerce. What one sovereign may do in respect to matters within its exclusive control the other may certainly do in respect to matters over which it has exclusive authority. (*Kentucky and I. Bridge Co. v. Louisville and N. R. Co.*, 37 Fed. Rep., 567; 2 Inters. Com. Rep., 380; 2 L. R. A., 289.)

The power granted to Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit only of one uniform system or plan of regulation throughout the country. \* \* \* In the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation, and not to a multitude of systems. (*Robbins v. Shelby County Taxing Dist.*, 120 U. S., 489; 30 L. ed. 694; 1 Inters. Com. Rep., 45; *Stoutenburgh v. Hennick*, 129 U. S., 141; 32 L. ed. 637.)

Congress may, under certain conditions, reduce the rates of fare on the Union Pacific Railroad, if unreasonable, and fix and establish the same by law. (12 Stat. L., 497, chap. 120, sec. 18.) This statute is discussed by Mr. Justice Brewer in *Ames v. Union P. R. Co.*, 64 Fed. Rep., 165; 4 Inters. Com. Rep., 835, and held not to conclude the State of Nebraska from fixing rates until Congress takes action.

This act (of Colorado) was intended to apply to intrastate traffic the same whole-some rules and regulations which Congress two years thereafter applied to commerce between the States. (*Union P. R. Co. v. Goodridge*, 149 U. S., 680, 37 L. ed. 896.)

The Interstate Commerce Commission is an administrative board, and the courts are only to be resorted to when the Commission prefers to enforce the provisions of the statute by a direct proceeding in the court, or when the orders of the Commission have been disregarded. (*Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 162 U. S., 184, 40 L. ed. 935, 5 Inters. Com. Rep., 391.)

The entire commerce of the United States, foreign and interstate, is subject to the provisions of the act of Congress to regulate commerce. (*Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 197, 40 L. ed. 940, 5 Inters. Com. Rep., 405.)

Upon the power of legislatures to fix tolls, rates, or prices, see note to case of *Winchester & L. Turnp. Road Co. v. Croxton* (Ky.), 33 L. R. A., 177.

A statute imposing a penalty for charging more than just and reasonable compensation for the services of a carrier, without fixing any standard to determine what is just and reasonable, thus leaving the criminality of the carrier's act to depend on the jury's view of the reasonableness of a rate charged, is in violation of the constitutional provision against taking property without due process of law. (*Louisville and N. R. Co. v. Com.*, 99 Ky., 132; 33 L. R. A., 209.)

Penalties can not be thus inflicted at the discretion of a jury. \* \* \* The legislature can not delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a "fair and just return" on its investments, it must, in order to maintain the validity of the law, define with reasonable certainty what would constitute such "fair and just return." (*Louisville and N. R. Co. v. Railroad Commission*, 19 Fed. Rep., 679.)

The Supreme Court of the United States, in *Railroad Commission Cases*, 116 U. S., 336, *sub nom. Stone v. Farmers' Loan & T. Co.*, 29 L. ed. 646, refers to the last-named case and substantially approves it.

Although a statute has been held to be unconstitutional which left it to the jury to determine whether or not a charge was excessive and unreasonable, in order to ascertain whether a penalty is recoverable, yet, where the action is merely for recovery of the illegal excess over reasonable rates, this is a question which is a proper one for a jury. (8 Am. and Eng. Ency. of Law, 935.)

The Iowa railroad commission act was attacked for uncertainty on the ground that it did not prescribe what should constitute a reasonable rate; but as the statute declared that the rate fixed by the commission should be *prima facie* evidence that it was reasonable, although the accused could show in defense that it was not reasonable, the supreme court of the State held that the statute was sufficiently definite, since the rate was fixed, although it was subject to attack in the courts. To the claim that the commissioners' rate would not secure the accused from conviction if it was excessive, the court declared that the State was precluded from denying that the commissioners' rate was a reasonable one. (*Burlington, C. R. & N. R. Co. v. Dey*, 82 Iowa, 312, 3 Inters. Com. Rep., 584, 12 L. R. A., 436.)

The same decision in substance was made on this question by Judge Brewer, then of the United States circuit court, in the case of *Chicago & N. W. R. Co. v. Dey*, 35 Fed. Rep., 866, 2 Inters. Com. Rep., 325, 1 L. R. A., 744.

The Illinois act providing that a charge by a railroad company of more than reasonable rates shall constitute extortion is held to be sufficiently definite when construed with another section which provides that the railroad commission shall make a schedule of reasonable maximum rates. (*Chicago, B. & Q. R. Co. v. People*, 77 Ill., 443.)

And the validity of this provision of the Illinois statute has been further established by the Illinois supreme court. (See *Chicago B. & Q. R. Co. v. Jones*, 149 Ill., 361, 4 Inters. Com. Rep., 683, 24 L. R. A., 141; *Stone v. Farmers' Loan & T. Co.*, 116 U. S., 307, 29 L. ed., 636, deciding the same way the Mississippi statute.)

The Georgia statute is not violated unless the rates charged exceed those fixed by the Commission. (*Sorrell v. Central R. Co.*, 75 Ga., 509.)

But, in order to constitute a crime, the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act can not depend upon whether a jury may think it reasonable or unreasonable. (*Tozer v. United States*, 52 Fed. Rep., 917; 4 Inters. Com. Rep., 245.)

An inquiry whether rates of carriers are reasonable or not is a judicial act; but to prescribe rates for the future is a legislative act. That Congress has transferred to any administrative body the power to prescribe a tariff of rates for carriage by a common carrier is not to be presumed or implied from any doubtful and uncertain language. If Congress had intended to grant such a power to the Interstate Commerce Commission it can not be doubted that it would have used language open to no misconstruction, but clear and direct. (*Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479; 42 L. ed., 243.)

In the case of *Munn v. Illinois*, 94 U. S., 113, 24 L. ed. 77, the Supreme Court of the United States, after a thorough review of the American and English authorities, has laid down the following fundamental principles governing public carriers and other quasi-public institutions:

1. Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his own property.

2. It has, in the exercise of these powers, been customary in England from time immemorial, and in this country from the first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, auctioneers, innkeepers, and many other matters of like quality, and in so doing to fix a maximum charge to be made for services rendered, accommodations furnished, and articles sold.

3. The Fourteenth Amendment to the United States Constitution does not in anywise amend the law in this particular.

4. When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public.

5. The limitation by legislative enactment of the rate of charges for services rendered in an employment of a public nature, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one.

Thus the highest court has permanently established the broad principle that the public have the right to regulate charges in all enterprises affected with a public use. To this doctrine all the courts have steadfastly adhered. In this leading case it was also held that the courts had no right to interfere with the rates fixed by the law-making power. This doctrine, however, has been since somewhat qualified in the case of *Reagan v. Farmer's Loan and T. Co.*, 154 U. S., 412; 38 L. ed., 1028; 4 Inters.

Com. Rep., 1028, and other cases there cited, where it is held that when rates are confiscatory the courts may so declare, and relegate the matter back to the lawmaking power for new rates, by which a reasonable profit is left to the carrier. But the principle that the legislative power, either directly or indirectly, through a commission, can fix rates of freight and passenger traffic within this constitutional limitation, has been uniformly upheld in all the decisions of the United States Supreme Court upon this subject.

### ADDITIONAL STATEMENT OF E. P. BACON.

Mr. BACON. I want to say a few words further in regard to a question that has been raised as to furnishing bond pending the determination of a case before the Interstate Commerce Commission. It must be borne in mind, in considering this question, that the party who pays the freight, as a general thing, is merely a middleman. He has no direct interest in it. He pays the freight and passes that additional cost along to the prices of the goods which he handles, and the total cost is finally borne by the consumer. Or, in the case of agricultural products, the freight rate that is charged is deducted primarily from the value of the property at the point of shipment, and in that case falls upon the producer.

The CHAIRMAN. It comes off of the one or the other.

Mr. BACON. In either case the man who pays the freight has no interest in it. That statement will probably cover 99 per cent of the traffic of the country. So that while the case is pending and the rate continues to be charged, there is no possible way of protecting the party who sustains the injury. He can not be reached. He can not be known, in the first place, and if he could be, such cases would be so numerous that it would be next to an impossibility to indemnify the loser.

That fact places the matter of freight charges in an entirely different position from all other questions that arise in litigation, and necessitates, consequently, entirely different treatment. One party or the other has got to suffer; the carrier will suffer if the decision of the Commission was wrong, and it is afterwards reversed, and the order is operative from the time of its issuance; and in the opposite case it will be the consumer or producer, as the case may be, who suffers. On the one hand it is the producer, and on the other it is the consumer who must suffer. So that it is a question of relieving the greatest sufferer—relieving the public, who are in fact the sufferers in case of excessive rates—relieving it from the necessity of bearing that burden throughout the long continuance of these cases in the courts.

I want to say one word further as to the necessity of this legislation at the present time, which necessity is increasing from year to year, arising from the fact of the enormous consolidation of railway interests during the past two years, and which is now going forward. The fact is that the greater proportion of the aggregate mileage of the railroads of this country, some 200,000 miles, is under the control of five or six syndicates, so called, controlled mainly by as many individuals; that is, five or six individuals have obtained the operating control of three-fifths of the railway mileage of the country; and that process is still going forward. It is stated that there is a scheme now under way for the consolidation of the four or five most important Western railroads, aggregating about 20,000 miles, which scheme is expected to be carried out. Another scheme is in progress in the South that

will take 10,000 or 12,000 miles more. So that we shall have 150,000 miles under the control of the very same individuals where they own a majority of the stock and control it in that way, or where the control is obtained by holding companies, as in the case of the Northern Securities Company, about which we have heard so much. This presents a phase that should commend itself to the serious consideration of legislators. Here is this vast railway traffic of the country coming into the control of five or six men.

And in connection with this process of consolidation I want to call attention also to the increase of capitalization. Where railroads have been purchased by other corporations, or consolidated, in almost every case the capitalization has been very largely increased. Take, for instance, the Chicago and Alton, which was purchased by a syndicate about two years ago. It was capitalized at \$30,000,000, and it was purchased by the syndicate for \$40,000,000, subject, however, to \$8,000,000 of the underlying bonds. But it was capitalized by the new corporation at \$94,000,000. The original capitalization was \$30,000,000. The road evidently had a high value, for they paid \$40,000,000 for it, and the new organization was capitalized at \$94,000,000.

The Northern Securities Company very largely increased the capitalization of the two railroads which were included in that consolidation—some 60 per cent, I believe. I have the figures, but I will not take the time to look them up.

But in all those cases of reorganization and consolidation the capitalization has been immensely increased. There has been for the past year, and there seems to be now, almost a mania on the part of large capitalists to obtain possession of railroad property, get it under their control, by means of which they can force such rates as will afford them very large profits. All this extra capitalization is effected, of course, with the expectation that the returns from the operation of that property will be sufficient to pay proper dividends upon the increased capitalization. That must be evident.

Now, it seems to me that these facts render it evident that this subject is one that requires proper and prompt legislation on the part of Congress to protect the people from the improper exercise of this great power to increase charges upon the transportation of the property in which every individual in the country is interested.

Senator KEAN. Is it not a fact that after all these consolidations have been effected the rates have been reduced?

Mr. BACON. That is the general impression, but I have found from an examination of the figures that such is not the case. The rates on merchandise two years ago were increased by general agreement among the various railroad companies.

Senator KEAN. On account of the increased cost of handling.

Mr. BACON. Nevertheless, the increase of business was far greater than the increase of capitalization. The statistics which have been procured by the Interstate Commerce Commission in regard to the results of these operations show that the average earnings per mile were greater during the year 1900 than during the ten previous years, and that the net earnings of the roads were also greater than the average of the preceding ten years.

Senator KEAN. They were better operated also than ever before.

Mr. BACON. They were undoubtedly operated at a less cost. But that should tend to reduce rates, instead of increasing them. The

public should have the benefit of such decreased cost of operation as it is possible to effect.

Senator KEAN. Everything else has advanced in price. Not only have the rates advanced, but the commodities that the railroads carry have advanced in price in every way, have they not?

Mr. BACON. The prices of materials have advanced, to be sure. But the increased volume of the traffic more than compensates for the increase in the value of the freight transported.

Senator KEAN. To what extent have wages advanced in that time?

Mr. BACON. I can not tell you the percentage, but I have given you the result.

Senator KEAN. They have advanced.

Mr. BACON. They have advanced. One result of the operations of the railroads has been very largely increased profits, dividends, and surplus during that period of two years.

And, by the way, I will say right here that I have ascertained from figures furnished by the Interstate Commerce Commission that the amount carried to surplus accounts by the railroads of the country during the past two years, after paying interest and dividends, and after making large expenditures for permanent improvements, aggregates \$165,000,000.

Senator KEAN. Is not the same true of nearly all other kinds of business in the United States—that they have had large surpluses in the last two years?

Mr. BACON. There has undoubtedly been a large surplus earned. But railways perform a public service, and that service should be performed at a fairly remunerative rate, affording a fair return upon the capital invested.

I cite this matter in order to show the possibility that is before us—in fact, the probability which confronts us—of a further increase of railroad rates in consequence of this extensive consolidation, and the necessity of providing some corrective, some supervisory control, to prevent abuses of that power at the expense of the people.

The committee adjourned.

---

## EXTRACTS FROM THE PRESS.

### NEW YORK.

*New York Mail and Express.*—The whole matter of regulating interstate commerce is in a state of chaos, though the power of Congress is unqualified, and so far as it is exercised excludes any State interference. Why should it not put an end to the confusion caused by the incorporation laws of different States, and tangling interstate commerce up in a jungle of constitutions and statutes that it will take the most astute lawyers and jurists years to make their way through? Why should not the powers and obligations of corporations engaged in interstate commerce be defined by one clear statute of national authority?

*New York Evening Post.*—The Merchants' Association of New York indorse the Nelson-Corliss bill, because it restores to the Interstate Commerce Commission the powers originally intended to be conferred, of which it has been stripped by the courts. The decisions of the



Commission now, the memorial states, amount to nothing more than mere propaganda, having no binding effect upon any person or corporation, either as shipper or carrier.

It is the big shippers who are in terror lest something should be done by Congress to rob them of their special privileges, and they are spreading broadcast the stories of popular discontent with the course of the Administration in enforcing the laws. The railroad companies—those, at least, with progressive men at their heads—are making no fuss at all, but merely expressing their hope that in proceeding with its prosecutions and injunctions the Government will treat all offenders alike, so as not to cast an undeserved stigma upon any one road or group of roads, even for the purpose of getting a test decision.

*New York Times*.—With an effectual supervision by the Government, directed to the enforcement of publicity and reasonable equality of rates, the tendency would, we are confident, be toward progressively lower rates.

*New York Railway News*.—Some effective remedy for the intolerable conditions which prevail under the interstate-commerce law to-day must certainly be provided.

*Wall Street (New York) Journal*.—Our belief is that a permanent solution of the railroad question can only be reached on lines which place the ultimate control of rates in the hands of the public's representative and place in the hands of the railroads the machinery necessary for the maintenance of those rates and the avoidance of discrimination.

The railroads at this moment stand in serried ranks, facing the law, and the settlement of the present dispute involves a settlement on first principles. Abuse of the railroad interests, on the one hand, and of the Interstate Commerce Commission, on the other, at this time is puerile. The former may have been guilty of imprudent action and the latter of dereliction of duty, but these are small matters when questions of first principles have to be settled, as they have at present. Looking at the situation as it exists to-day, we believe that the railroads must, sooner or later, surrender the rate-making power to the Government. By doing so now we believe that they can secure the right to protect themselves in the conduct of their business. Later it may be difficult, if not impossible, to do so.

Many people who are studying this matter are blind to one very important fact, which is that the people are taking alarm over recent events, and that they will demand some kind of protection from Congress. The wiser heads in the railroad world see that there is a chance now, by conceding Government control over rates, to secure Government protection for organization. They see that sooner or later the public will demand rate control, and they see that if that demand be refused it will eventually be enforced without corresponding protection being given.

The Interstate Commission is the natural and proper machinery for bringing about the necessary change in the law. It is absurd to say that an appointive commission can not be trusted to be honest, and it is equally absurd to say that it must necessarily act in a foolish manner, even if it be not actuated by corrupt motives. We fancy that it would be difficult to persuade the average shipper that the danger to him from corruption of public officials is necessarily greater than the danger arising from the self-interest of powerful financiers and corporations.

*Buffalo (N. Y.) Express.*—In deciding to ask Congress to enlarge the powers of the Interstate Commerce Commission, the governors of the Northwestern States have taken at least one step which promises some practical results. The Commission needs all the support it can get. As the establishment of close traffic arrangement in one form or another can not be prevented, the enlargement of the powers of the Interstate Commerce Commission appears to offer the only check that can be found on exorbitant freight rates.

What the outcome of the Commission's efforts will be remains to be seen. If this body is to be continued, it should have enlarged powers, including supervision of rates in a large degree if not completely. The Commission and its friends have no easy task before them, yet, undoubtedly, it is the wish of the country that something be done to clear up this vexing question.

*Brooklyn (N. Y.) Eagle.*—Equality of rates is the great demand of the shipper. He would be reasonably assured of this were the scope of the Interstate Commerce Commission broadened as it should be. If the Commission is to do nothing better than provide for the collection and compilation of statistics it might as well be abolished and its duties, as at present defined, transferred to an ordinary bureau. If it is to remain in existence it should be endowed with the authority to make its decisions worth the paper they are written on.

#### MINNESOTA.

*St. Paul (Minn.) Pioneer-Press.*—The vital point is to find a remedy for the evils of combination, whatever form it may assume. The President's view that the remedy is to be found in a larger Government control, through the Interstate Commerce Commission, is that of the Commission itself, and of the best opinion of the country.

Objection is made that there is no use trying to get a measure of that kind through Congress; that all the combined influence of the railroad corporations in this country would be employed to defeat it, as they have heretofore managed to defeat all amendments to the interstate commerce act designed to enlarge and effectuate the powers of the Commission. But if they have easily succeeded in defeating such attempted legislation heretofore, it is because it was backed by no active or urgent popular demand.

So long as the railroads were cutting each other's throats in relentless wars of competition the people were comparatively indifferent to any Government control. But now, after the survivors of the slaughter and the reorganized successors of a multitude of bankrupt railroads have found a way to avoid ruinous rate wars in consolidation or combination, the American people will surely insist upon such adequate protection from any abuse of their powers of taxing commerce and industry as can only be found in an effective Government control. Under existing conditions it is entirely safe to assume that the popular demand for such legislation will become so urgent and imperative that no Congress would dare to disobey it, and that the united influence of the railroad corporations, with all their thousands of millions of capital behind them, will be impotent to resist the mandate of the public will.

*Minneapolis (Minn.) Tribune.*—The measure introduced by Congressman Corliss, of Michigan, appears to be the best substitute for the present interstate-commerce law which has appeared.

*Faribault (Minn.) Republican.*—The present helpless state of the Interstate Commerce Commission is indicative of what will be the condition of the public if the railroads are not restricted from effecting unlimited combinations for controlling business in their interests. The disclosures of discriminations and rebates to the larger shippers in direct violation of the law made in the late investigation by the Commission in Chicago show that the law has been but a cobweb before the mercenary forces whose interest it is to disregard it. Representative Corliss, of Michigan, has introduced a bill making amendments to the bill for the purpose of strengthening the hands of the Commissioners, but in view of the ill success of past legislation the outlook is not encouraging.

*Duluth (Minn.) Tribune.*—The bill recently introduced in the Senate to increase the powers of the Interstate Commerce Commission is a step in the right direction. It is in line with the general demand that the Commission should either be abolished or made effective for good by giving it the power to enforce its decrees subject, always, to appeal to higher tribunals.

#### INDIANA.

*Muncie (Ind.) Times.*—The Interstate Commerce Commission should have more authority. At present the Commission can do little else than point out where evils exist and suggest remedies.

*Indianapolis Sentinel.*—The Interstate Commerce Commission has made a strong showing of the need for greater power, but there is little probability of Congress giving it. The railroads and trusts do not want the law made effective, and this is a Republican Congress.

The country should not lose sight of the desired amendments to the interstate-commerce law. As the Commission urges, it has no power to accomplish the ends for which it was created.

*Indianapolis Sentinel.*—The Commission has asked for increased powers repeatedly, but the railroad and trust lobby has always been able to defeat the measures. Of course it is possible that the roads might get control of the Commission, if it were given adequate powers, but that is no reason for making it a mere figurehead. It should be given power to regulate commerce or it should be abolished. The bill introduced by Mr. Corliss, of Michigan, ought to be passed.

*Indianapolis News.*—If more power is not granted to the Interstate Commerce Commission by the present Congress, the people in the coming elections will want to know why.

It is useless to talk of the wisdom of the let-alone policy when the railroads themselves are doing everything in their power to destroy those conditions under which alone the let-alone policy can be defended. The theory on which free and popular governments keep their hands off private quasi-public enterprises is that the force of competition is sufficient to protect the people. When, therefore, these enterprises interfere with the free action of that great force, they must expect another one put in motion. No great thing is asked. All that the people want is that existing legal agencies be made effective. It is through them, and them alone, that competition can be preserved.

To doubt that a remedy can be found for the evils from which the country is now suffering, or with which it is threatened, is to doubt the capacity of the people for self-government.

No law should pass Congress that does not permit the decisions of the Interstate Commerce Commission to be binding at the moment of their promulgation, and that does not throw the burden of their reversal on the railroads.

We do not believe our Senators and Representatives realize the depth of public feeling on this subject. For, if they did, they would take up the question and consider it seriously, with an honest purpose to arrive at the solution that would be best for all.

*Indianapolis Sentinel.*—It is hardly necessary to state that the people who want the evil stopped are not in favor of the Elkins bill and are in favor of the Nelson-Corliss bill, which is a good measure. If the power of trusts is to be curbed this law is absolutely necessary, and all who are interested in securing fair and equal rates should write their Senators and Representatives in support of it.

*Indianapolis Sentinel (Dem.).*—The Democratic party is to be congratulated on its square stand for giving the Interstate Commerce Commission power to enforce its rulings. All the trusts have profited by this abuse, and many of them owe their very existence to it. It was railway favors more than anything else that built up the Standard Oil monopoly, the beef trust, and other of the most odious of the combines.

#### ILLINOIS.

*Chicago (Ill.) Journal.*—The Interstate Commerce Commission is popularly supposed to be a national board that in a great measure controls the railroads of the country and protects the people from unjust oppression on the part of the roads. This undoubtedly was the original object of the law, which was passed by Congress in 1887, but year after year since then the lawyers of the railroads have torn wider and wider holes in it through which they have not only driven the traditional "coach and six," but great railway trains as well, with the result that nobody now precisely knows what the Interstate Commerce Commission is, or its powers and duties. Congress seems to be powerless, or else unwilling, to patch up the law thus rent in fragments. Every session of the Commission simply adds to the demonstration of its impotence. Congress should mend it or end it.

*Chicago Chronicle.*—It is enough to know that the Commission is practically powerless, and that the law under which it acts is not much better than a dead letter. The real question is whether the law ought to be changed so that it will have some effect to protect the public against the abuses of corporate power against which it purports to be aimed. If not the law may about as well be wiped clean off the statute books and the Commission abolished as a useless and expensive excrescence upon our governmental establishment. There can not be much doubt that public sentiment is overwhelmingly in favor of such action as will make the law of some effect.

The wild and eccentric competition between railroads, by which rates for freight and passengers are indiscriminately cut to meet the rates of some rival bankrupt or reckless line, is the worst evil of railroad commerce. It demoralizes all business of the country which is regulated by the prices for transportation. Under intelligent supervision by proper authority pooling contracts would be equitable to every interest, and would give to railroad commerce a stability of rates with

other such other fair regulations as would constitute a substantial reform in the business methods of the country.

*Chicago Post.*—One thing is certain, unregulated monopoly the people will not endure. The corollary of mergers, consolidation, and pooling is systematic and rigid control by a court, commission, or any other agency representing the interests of the people. Transportation will not be allowed to regulate itself. The advocates of the let-alone policy are playing into the hands of those who favor Government ownership. The law should permit consolidation and pooling, but it should also guarantee equal and fair rates. This is the position of the President and the Commission.

*Chicago Post.*—The people of the United States will not tolerate favoritism, discrimination, and abuse of monopolistic power by the railroad corporations. In the words of Chairman Knapp, of the Interstate Commerce Commission, "No service which the Government undertakes can be more useful, and no duty which rests upon it more imperative than to secure for the public always and everywhere equal treatment by every railway carrier." The "let-well-enough-alone" cry is absurd, for the situation is not satisfactory to the majority of shippers. Wherever there is monopoly there must be supervision and regulation in the public interest. The only possible alternative to regulation is Government ownership. "Enlightened self-interest" is a broken reed to lean on where competition fails or finds itself barred by the nature of the industry.

Mr. Roosevelt's policy is fair and reasonable. He offers to aid the railroads in obtaining better and more modern legislation, but present abuses he insists on suppressing. It is idle to threaten him with withdrawal of support. The railroads will not stand together in the contest outlined, and they could not win if they did stand together. The people would be on Mr. Roosevelt's side, and they are more powerful than the railroads. The truth is mighty, especially the truth about the evils of discrimination and favoritism in rate making. The railroads will not carry out the threats they are alleged to have made.

The railroad corporations are not by any means satisfied with the status quo and they have a programme of their own to promote. While they have crippled the Commission, the necessity of resorting to secret rate cutting, rebates and other violations of the law is painful to some of them. Other things equal, they would rather obey the law and adhere to published rates. Unfair competition drives them into practices they can not wish to continue indefinitely. What they want is reasonable freedom of contract and pooling, of association for the regulation and equitable distribution of traffic.

*Chicago Inter-Ocean.*—The agitation against railway consolidation and the demand for equity in railway rates do not arise from a desire to injure anyone. They arise from the perception that transportation has become such a commercial and industrial necessity to the people that equality in charges is almost as vital as equality before the laws.

To many citizens the only safe alternative in the railway problem seems to be Government control of the rate-making power. For many reasons the vast majority of Americans do not desire Government ownership. Yet equality in railway rates they must have, and this equality the railway managers have practically confessed their inability to attain. All their traffic agreements, pools, etc., in the last analysis are no bar to discrimination.

Hence Mr. Cassatt is wise if he supports the plan of effective Government supervision over the rate-making power. Those who oppose such supervision but strengthen the hands of the confiscators.

*Chicago News.*—How serious is the need of a revision of the law is shown in the annual report of the Interstate Commerce Commission, which does not mince words in denouncing the present evasions of the measure as "surprising and offensive to all right-minded persons." The Commission declare that the criminal provisions of the law need reinforcement. Unless Congress is disposed wholly to discredit the Commission's report, it can hardly ignore these recommendations, unless it proposes to repudiate the principle of Government supervision of railways.

*Chicago Drivers' Journal.*—As the matter now stands, the Commission can do nothing except to investigate and make a report. The railroads are said to violate agreements and rules with impunity, because they know that it is highly improbable that a fine will have to be paid.

*Chicago Standard.*—The difficulty with the work of the Interstate Commerce Commission is that it has no power to enforce its mandates. It is to be hoped that Congress will soon come to the relief of the Commission and, disregarding the formidable opposition by the railroad lobby that is certain to be organized, will amend the law in such a way as to give the Commission power to fix at least maximum rates, and to enforce its decisions by direct judicial process under proper limitations.

*Chicago (Ill.) Railway Age.*—Railway legislation is a fact, and, in the absence of Government ownership, will continue to be a fact. The principal thing just now is to relieve the present intolerable situation, and the Elkins bill as presented seems to fairly promise to do this.

*Springfield (Ill.) News.*—The Interstate Commerce Commission has shown many abuses which need correction, but which it is powerless to correct. Congress will be supported by public sentiment in any extension of power given the Commission.

*Pekin (Ill.) Times.*—The interstate-commerce law should be amended or repealed. As a joke it has been carried too far.

*Springfield (Ill.) Journal.*—The Cullom bill has now been replaced by a shorter and simpler one, which will accomplish all that is really necessary and which stands a much better chance of being enacted into law. These simple amendments will be effective if adopted, because they will close up the loopholes through which the railroads evade compliance with the orders of the Commission. If they are compelled to observe the orders of that body until the courts reverse them, they will not violate the law with impunity as they have done for years past, and there will be an immediate change in their methods.

*Examiner, Mount Sterling, Ill.*—It is enough to know that the Commission is in fact practically powerless and the law under which it acts is not much better than a dead letter. There can not be much doubt that public sentiment is overwhelmingly in favor of such action as will make the law of some effect.

*Bloomington (Ill.) Pantagraph.*—A representative of the Chicago Board of Trade and the Illinois Manufacturers' Association has made some important statements before the House Interstate Committee with reference to rate discrimination by the railroads. He told the committee that the roads made a cheaper rate on wheat from Chicago

to New York for wheat than they did on flour. There is a measure under consideration that will correct the evil if it is adopted. It provides that when the Commission after investigation finds that a rate is unreasonable and a reasonable rate is fixed this rate will remain effective until the question is passed on by the courts. Unless some authority like this is given the Commission, the railroads will laugh at its decrees and continue the unjust practice of giving rebates to favored shippers. It is up against this Congress to pass some legislation that will insure fair dealing among shippers, great and small, and if it is not done the country will be disposed to bring to account those responsible for the failure. The matter has been talked up as a campaign issue and staved off at Washington until the people are beginning to see through the scheme and are demanding action as well as words.

*Rock Island Argus.*—Until a bill to strengthen the Interstate Commerce Commission is passed the war against trusts is useless.

*Springfield (Ill.) News.*—There is certainly added force to the movement for more power for the Interstate Commerce Commission in the report of the Commission just made public. At all events it is plain that, if the Commission is not to be given enlarged powers, some method should be devised by which such orders as can be made may be enforced within a reasonable time. The fact is that the Government can exert a proper control over the railroads of the country only through some such a commission as the Interstate Commerce Commission, and since this organization is in existence, and is composed of men whose abilities, integrity, and good common sense are unquestioned, Congress can reasonably do nothing else but extend the powers of the Commission to the extent that they ought to be. That Congress fails to do its duty in this connection is a matter which the people of the country are coming to regard with suspicion.

#### PENNSYLVANIA.

*Philadelphia North American.*—The obvious remedy is that proposed by the commissioners—first of all to require the publication of tariff rates, then their uniform application to all shippers, and finally to permit the inspection of company books by Government agents. Doubtless traffic managers who prefer the lax system under which they now ply trade will find nothing to commend in the commissioners' plan.

*Philadelphia (Pa.) Press.*—The most important reform which the Interstate Commerce Commission urges in its report is the demand that the act of 1887 "should be amended so as to open the books of the carriers to the inspection of the Commission or its agents." Congress ought to pass this law, and pass it at once. There is everything to be said in its favor. There is nothing to be said against it. A railroad corporation is a public carrier. A public carrier is a public servant. Its books ought always to be open for inspection. If it is keeping its rates published, there is nothing to conceal. If it is not keeping these rates, it is committing a crime. In either case public policy requires publicity. Congress would pass this act in a week if members were not influenced in a score of sinister ways by the influence of great railroads which mesh them about with gifts and political aids.

*Scranton (Pa.) Republican*.—The Interstate Commerce law should be amended. There can be no question about that. The act as it now stands is more or less purposeless. A determined effort is being made to amend the law so as to restore full power to the Commission. The Corliss bill should be passed, but it is by no means certain that it will be. The railroads maintain a powerful lobby at Washington, and can make very hard sledding for any measure they may set about to oppose in earnest. The Corliss bill authorizes the Commission to correct rates that may be regarded as unjust and discriminating but does not abolish the right of appeal, and is regarded as a very mild measure by the shippers, who really think they are entitled to far more substantial protection than the bill as it now stands can afford them.

*Scranton (Pa.) Tribune*.—For years there has been a well-founded complaint at the inadequacy of the power vested in the Interstate Commerce Commission to enforce equality among shippers. A bill to supply the deficiency in this direction is now pending in the House, having been introduced by Representative Corliss, of Michigan. The law is to be put into enforceable shape. This should be done or the law repealed. In its present shape it is merely a travesty.

#### IOWA.

*Sioux City (Iowa) Tribune*.—Chairman Knapp is trying to get Congress to at least amend the interstate commerce law so the Commission can prevent secret rate cutting and the practice of giving rebates to big shippers. The transportation situation will never be satisfactory till this reform is effected, and as uniformity of rates would be beneficial to the railroads as well as to the public, the former ought to encourage Mr. Knapp.

*Marshalltown (Iowa) Herald*.—The people of this country are practically unanimous that the powers of the Interstate Commerce Commission should be so enlarged that it shall have the power to prevent combinations which may be made to the detriment of the people and to business generally, and that it is the duty of Congress to take prompt and decisive action in this matter, that the relief demanded may not be delayed because of the nonaction of Congress.

*Des Moines Leader*.—That some law along the lines of the Nelson-Corliss bill should be passed under which a board, combining executive and judicial functions, shall have authority, in the name of the nation, to prescribe reasonable rates, is now generally admitted. The principle may be said now to be almost universally admitted. With the elimination of competition in the railroad business, a condition whose coming is clearly foreshadowed, it will become a public necessity to establish public regulation of transportation rates. Otherwise power would be in the hands of a few persons to apply to a degree most oppressive the principle of making the rate all traffic will bear.

*Des Moines Register*.—The Interstate Commerce Commission's recommendation that the law under which it has been attempting to work be amended in such a manner as to give the Commission power to accomplish something will be a great benefit to Iowa if it is heeded by Congress and given recognition in the statutes. A proportionate car load freight rate is just what is needed to build up all the home markets of Iowa—that fact is true as to the home markets of all the



other States—and all the people of the nation should steadily labor until that long-needed measure of justice for all has been gained and enforced.

*Des Moines Leader.*—There can hardly be serious disagreement with the opinion that if Senator Dolliver shall decide to introduce in the upper house of Congress the Corliss bill relating to the powers of the Interstate Commerce Commission, he will be acting in line with the sentiment of the State which he represents. The great business interests of the country that are directly dependent for their prosperity on transportation are more nearly aroused than ever before to the necessity of making the Commission a real power instead of a shadow without the substance. It is to be hoped Senator Dolliver will accept the opportunity to do a great service. His public career will lose nothing by it. He will, indeed, find himself one of the central figures in a great fight in which the most powerful special and private interests of the country will be arrayed against him, but he will have the people of Iowa and the business men of the country with him, and in the end he will win. The measure is one that, when properly presented, will command the support of the country.

*Dubuque (Iowa) Times.*—The Nelson-Corliss bill now pending in Congress gives the Interstate Commerce Commission the power to revise tariffs. The objections made to it are more technical than substantial. The bill should become a law at the present session.

*Dubuque (Iowa) Journal.*—Why has Senator Elkins united a pooling proposition with his bill authorizing the Interstate Commerce Commission to make rates on interstate traffic? The question of whether rate cutting could be prevented in the absence of a pool is quite distinct from the question of whether the Commission can be trusted to revise the rates on interstate business. The States successfully regulate rates on business wholly within their own borders without exempting railway companies from the operation of the antitrust laws. The question should be divided. The Commission should be given power to revise rates, and the question of whether pooling must be sanctioned in order to prevent discrimination in favor of big shippers or shipping centers should be left for future determination.

*Dubuque (Iowa) Times.*—Our delegation in Congress may accept the legislature's indorsement of this measure (the Corliss bill) as a faithful reflection of Iowa sentiment respecting the need for legislation that will serve the original purpose of the interstate-commerce law.

*Clinton (Iowa) Herald.*—Under existing circumstances the Commission, which stands in the attitude of the representative of the United States as between carrier and shipper, is absolutely without power to give any utterance of opinion, or to lay down any binding rule. The Commissioners themselves have repeatedly stated this fact. The right of the Commission to prescribe a remedy, subject to appeal to the courts, is fair to shipper and carrier, and would be effective. It is undoubtedly necessary for the proper conduct of the commerce of the United States that there should be some intelligent and responsible body empowered to fix, adjust, and decide rates and all questions arising on complaint between railroad carriers and the shippers.

At the time of the passage of the interstate-commerce act the universal belief was that Congress intended to give the Commission such power. But the act having been construed otherwise by the courts, it now devolves upon the Congress to remodel the law so as to give it

the force originally intended. The rehabilitation of the commission has already been too long delayed, and it is not too much to say that the people of this country begin to feel that their patience has been abused.

For the safety of the railroads, as well as the good of the country, there must be some tribunal to which appeal can be made, and which has the power to render quick and full justice and enforce its mandates without delay. The prompt passage of the pending bill would do injustice to no one and give the shipper what he has long sought and waited for—a chance for fair and uniform rates, fair treatment, and a stable and uniform classification.

#### WEST VIRGINIA.

*Wheeling Register.*—The Interstate Commerce Commission is after a few of the railroads not respecting the law of the land, and is evidently disposed to do the best it can with these notorious violators of the interstate-commerce laws and the Sherman antitrust law. The whole procedure savors of the ridiculous. A simple bill passed by Congress, regulating rates and providing ample penalties, would be sufficient. The present situation savors largely of farce comedy, and is so esteemed by the public.

It is high time that Congress was supplementing the powers of the Interstate Commerce Commission, which is now without the ability to practically reform railroad abuses. In short the interstate-commerce law is a farce and a dead letter, so far as regulating the railroads or railroad rates are concerned, and the amendments proposed by the Corliss bill, prepared under the direction of the Interstate Commerce Law Convention, should receive the attention of Congress.

*Wheeling (W. Va.) Intelligencer.*—Recent developments have been such as to make it incumbent upon Congress to act. The time is opportune, and further delay would arouse such a feeling of resentment in commercial circles as to render possible serious agitation for radical measures against the carriers. Public opinion is in sympathy with the present movement. This is apparent from expressions by prominent statesmen and business men, by testimony submitted to the Industrial Commission on the subject of transportation, and in the known desire of certain representative railroad men to meet the friends of the proposed legislation in a spirit of compromise. Attention should also be directed to the action of the legislatures of Michigan, Kansas, Wisconsin, and other States, in passing joint resolutions urging upon Congress the necessity for prompt remedial legislation. The firm attitude taken by President Roosevelt in his recent message in discussing this subject is of the deepest significance, and is indicative of the vast change that has taken place in high quarters within recent years. Some relief is demanded, and some must come from the present Congress.

#### WASHINGTON.

*Spokane (Wash.) Chronicle.*—If the voters of Washington really want to secure better rates from the railroads, let them do their share to secure laws that will give the people of this nation genuine control of interstate commerce by means of duly appointed commissions. To begin the good work, let them see that no candidate for Congress is

nominated next summer who is not pledged to support such legislation as is needed to enable the Interstate Commerce Commission to enforce just freight rates from every State or Territory to every other State.

*Spokane (Wash.) Spokesman.*—The present law is sadly in need of mending, if the Commission is to perform the work expected of it in the matter of regulating rates. The Commission has had the power to investigate railway abuses and to issue orders, but it has been powerless to enforce them. In several instances it has found rates to be unreasonable, and has ordered that new tariffs be established, but the roads have laughed at the Commission and have ignored its mandates as completely as if it never existed.

#### TEXAS.

*Houston (Tex.) Post.*—The Interstate Commerce Commission is an institution that is surely calculated to impress not only the political philosopher but the ordinary business man with the folly of a bureau or department without power. What is the Commission for? What does it do? What good is accomplished by what it does?

For years the Interstate Commerce Commission has reported that the law is constantly violated by railroad corporations. The cardinal provisions of the interstate-commerce act are that railway rates should be just and reasonable, and that all shippers, localities, and commodities should be accorded equal treatment.

There is no doubt as to the duty of Congress. It should give the Commission the power to compel the railroads to disclose all the facts in their possession that would bear on suspected violations of the act. Not only should the legal remedy and punishment for such violations of the law be adequate, but the hands of the Commission should not be tied in making the investigations that the law imposes upon it.

*Houston (Tex.) Post.*—As to the benefit that would result to the people from an interstate-commerce act that could be enforced, it would be enormous. Congress should take up the question of amending the interstate-commerce act and give it immediate and earnest attention.

#### MISSOURI.

*St. Louis (Mo.) Republic.*—So practical are the arguments in favor of an amendment to the interstate-commerce act with a view to effectively empower the Interstate Commerce Commission to punish all railroads violating the law against discrimination between shippers that the favorable action of Congress should be certain. The proposed amendment is urged by all the leading commercial organizations in the United States. The point at issue is a plain business proposition, remote from politics, and the public sentiment of the Union, supported by the commercial bodies and the Interstate Commerce Commission, itself should prevail for the general good. The amending of the interstate-commerce act will constitute early action, unless the railroad influence in Congress is too strong to be resisted.

Every Congressman should be made to realize that public sentiment demands the amending of the interstate-commerce act as now contemplated. The time to relax such effort will not have arrived until the interstate-commerce act has been definitely amended.

*Kansas City (Mo.) Star.*—There is evidently need of legislation to

make the Commission an efficient body. It must have power to give speedy relief to shippers, and to enforce its rulings without the interminable delays which now make its work futile. If its hands are not strengthened, it might as well disband.

*Joplin Globe.*—It is an absurdity to protest hostility to the beef trust, which confessedly has been able to control markets by rebates on freights from railroad companies, and at the same time refuse to pass the bill for which the Interstate Commerce Commission has for years been begging, to give it adequate powers to compel railroads to make equal rates. If the Commission had that power and exercised it, the ability of the beef trust to control markets would be largely curtailed.

#### MASSACHUSETTS.

*Boston Record.*—The Interstate Commerce Commission would assume the position of some dignity if, following the recommendations of the Industrial Commission, Congress should decide to make a definite grant of power to the Commission, never on its own initiative, but only on formal complaint, to pass upon the reasonableness of freight and passenger rates or charges; also definite power to declare given rates unreasonable.

*Christian World (Boston, Mass.).*—The American public has few more burning domestic questions before it now than giving to the Interstate Commerce Commission, or some other body of Federal officials, authority to deal with and punish the railroad corporation officials and captains of industry who violate the laws governing uniformity of rates to shippers.

*Boston (Mass.) Journal.*—The bill has for its single purpose the amendment of the existing act in such a manner as to make it actually effective for the purposes for which it was framed. It is intended, in other words, to confer upon the Interstate Commerce Commission the powers which it was clearly the mind of Congress should be exercised by it, but which have been taken from it by the rulings of the courts.

*Boston Transcript.*—Revision of the Interstate Commerce act is urgently needed. The purpose of the act—to put a stop to discriminations—has not been attained; the evils against which it was directed still flourish. The situation clearly needs amending legislation which shall make the system of public control of the railroads through the Interstate Commerce Commission really effective.

#### CALIFORNIA.

*San Jose (Cal.) Mercury.*—During the present session of Congress there should be enacted a Federal law which will have the effect of so strengthening the Interstate Commerce Commission as to make it efficient or should abolish it altogether. For the past several years the cry of its members has been expressed in every annual report for legislation that would enable it to enforce its decisions against carriers who have been treating them with a scornful disregard. There is no question that the necessity of such legislation is urgent. The Commission is at present an expensive and a useless body. Congress has no longer the right to disregard the cry of the Commission and the inter-

ests of the public. Better no commission than an impotent one. Let it either be made efficient or wiped out of existence.

*San Francisco (Cal.) Call.*—Unfair and illegal discrimination is one of the greatest evils that now afflict the industries and the commerce of the people. Some method must be devised for protecting the industries of the country from such evils, and no better plan is at present in sight than that of strengthening the power of the Commission and holding it responsible for the enforcement of the law.

*Los Angeles (Cal.) Journal.*—Not until the powers of the Interstate Commerce Commission to enforce its rulings are made plenary can the public expect a substantial measure of protection against extortion, discrimination, and oppression practiced by common carriers.

*San Francisco (Cal.) Call.*—It would be well for merchants, manufacturers, and other large shippers of the country to unite in a concerted movement to bring pressure to bear upon Congress in favor of the measure to enlarge the powers of the Interstate Commerce Commission. It is clearly the duty of Congress to act, but of course Congress is not going to act unless the shippers of the country demand it. So long as the railroads can keep the people divided just so long can they keep Congress quiet and the Commission and the courts powerless.

#### VIRGINIA.

*Norfolk (Va.) Pilot.*—There is, undoubtedly, a large sentiment in the country in favor of giving the Interstate Commerce Commission more power. The bill generally favored was introduced by Representative Corliss, of Michigan. We believe that the Commission should be given the power to make rates outright, but, failing that, the power to correct rates that will enable it to supply a remedy in case of discriminations. If the published tariff is too high, however, and excessive, the Commission, under this bill, can afford no relief as long as all are treated alike.

*Norfolk (Va.) Pilot.*—The interstate-commerce law as it exists to-day is the mere headless body of a statute decapitated by the United States Supreme Court.

#### NORTH CAROLINA.

*Raleigh (N. C.) News.*—The present Congress ought not to adjourn until it gives the Interstate Commerce Commission power to regulate rates. The rapid consolidation and mergers of great railway systems has made it vital to give this power to the Commission for the protection of the public.

*Raleigh Observer.*—Full of railroad owners and railroad attorneys, Congress will do nothing toward proper regulation until the people emphatically demand positive action, and back up their demand by a threat to send members of Congress into retirement. That is not now in sight and therefore no remedial legislation may be expected at this session.

#### COLORADO.

*Denver (Colo.) Republican.*—The Interstate Commerce Commission has been deprived of the requisite power to make its decrees effective. It has been necessary for it to appeal to the courts to compel the rail-

road companies to obey its orders. Thus it has been almost powerless to achieve the things which were hoped for when it was organized.

*Denver (Colo.) News.*—On the Commission itself there have been many eminent lawyers, and since their experience with the Federal courts they are all agreed that the Commission has been shorn of all practical power to name and enforce equitable rates.

*Denver Post.*—The Interstate Commerce Commission was originally formulated and created for the purpose of standing between the public and the railroads, to prevent extortion, to insist upon certain equities, to have the country as a whole treated equally by the corporations, to give the small shipper the same advantages as the large, and stop railway combinations from imposing upon the powerless public. The Commission has not accomplished this purpose because it has not had the power to do so.

Now it is suggested that it be given the power to fix rates upon a basis so fair that the railroads can always make money and still serve the public wisely and well.

Of course, the railroads object. They want to fix their own rates, although they ask from Congress and the State and communities generally all manner of benefits. The rate-making power should not be in the hands of the railroads. It really belongs to Congress. Originally it was in the hands of that body, and when railways were organized and given vast grants and powers by the National Government, the National Government usually fixed charges, features, and tariffs.

To-day the railroads are exercising a public function, but they have gone far beyond their rights and privileges. The time seems to have arrived for the Government to exercise the power, which no one questions it has, to supervise and control when necessary the acts of railroad officials.

If Congress delegates this power to half a dozen capable, competent, just, and fair men, giving them the right to act in the interest of the public and to treat the railroads fairly, these great commercial arteries should not object. If they do object it should make no difference.

*Denver (Colo.) Times.*—President Roosevelt, the greatest of the servants of the people of America, and his Attorney-General will not fail the nation—that is absolutely certain. But they are alone and can do comparatively little. The time has come for the most radical and sweeping extensions of the power of control and supervision of the Interstate Commerce Commission. Congress can hardly go too far to meet popular approval. But will it rise to the occasion with broadest statesmanship?

#### OHIO.

*Columbus (Ohio) Journal.*—Recent developments have been such as to make it incumbent upon Congress to act. The time is opportune, and further delay would arouse such a feeling of resentment in commercial circles as to render possible serious agitation for radical measures against the carriers. Public opinion is in sympathy with the present movement. This is apparent from expressions by prominent statesmen and business men, by the testimony submitted to the Interstate Commission, and in the known desire of certain representatives in a spirit of compromise.

*Cincinnati (Ohio) Commercial Tribune.*—The result of the ruling of the Supreme Court is to put complainants to heavy expense for witnesses and for counsel, merely to find the losing party refusing to delay in going down to the tavern to swear at the court, but enabling him to begin, at once and defiantly, to ask the Commission what it is going to do about it. The Commission exists to-day merely as a gatherer of statistics of no particular value, unless the complainant before it selects to take the record into some court and, after going over the whole case again, asks the justice which was denied him before the Commissioners. Even if justice had been awarded him it would be of no avail, for the reason that the Commission is without power to compel the losing party to respect its decrees.

## LOUISIANA.

*New Orleans (La.) Times-Democrat.*—The Interstate Commerce Commission, which did an immense amount of good for the first few years after its creation in the way of obtaining justice for the shipper of goods by railroad and generally in the way of regulating rates, has now for several years had its efforts frustrated by the Federal courts, which in many cases have rendered decisions in favor of the railroad corporations in litigation with the Commission.

The Commission is, in fact, now almost entirely shorn of its powers, and unless it obtain rehabilitation from Congress through either of the two bills now before that body, it might as well close up its affairs and go out of business, for all the use of which it has recently been, and is.

Unless some legislation is enacted this session to strengthen the hands of the Commission in its continuous fight with the corporations, it is not unlikely that the Commission will go by the board. There is no use for its decisions if its decisions be not backed up by the law.

*New Orleans Item.*—Congress must strengthen the hands of the Interstate Commerce Commission. The railroads see that legislation will soon compel them to do away with their devices of favoritism, and are resorting to the only possible method of defense, that of universal consolidation. But a complete consolidation will never come until the Government assumes charge, and hence it is imperative that Congress shall act and act promptly.

*New Orleans (La.) Item.*—Congress should not delay to clothe the Interstate Commerce Commission with the powers they ask, powers that were intended to be by the original act, but which were wiped away by the Supreme Court.

## NEBRASKA.

*Omaha (Nebr.) Twentieth Century Farmer.*—Public sentiment is rapidly crystallizing in favor of the supervision of corporations engaged in interstate commerce. The demand of the hour is for the fullest publicity in corporate management, and especially in the management of colossal corporations, whether organized as trusts or under cooperative control.

The demand for publicity is no longer confined to the press and public officers holding executive position in the State and nation. It has at last dawned upon the corporation managers and trust attorneys that the well-defined business sentiment against everything resem-

bling a blind pool and in favor of the fullest publicity must be respected and complied with.

*Omaha Bee.*—It would seem that Congress should need no more enlightenment in regard to public sentiment in this matter; that in view of the disclosures of the last three months regarding the widespread and persistent violations of the interstate-commerce law Congress can require nothing more to convince it of the necessity for so amending the act as to make it more effective.

*Omaha Twentieth Century Farmer.*—The advocates of strengthening the law should not weaken or abate their efforts so long as there appears to be a chance of getting what they believe to be essential. They should find encouragement in the fact that they are supported by a stronger public sentiment than ever before since the policy of railway regulation was instituted.

*Omaha Bee.*—The demand for strengthening the Interstate Commerce Commission has an overwhelming public support, and the necessity for it has been most conclusively demonstrated. \* \* \* Congress ought to have the courage to meet this question squarely and determine it as the public interests clearly require.

#### MICHIGAN.

*Grand Rapids Post.*—The failure of Congress to act on the proposed amendments to the interstate-commerce law would be a serious blunder, involving dire consequences; and it is not likely that the people of the United States can be induced to demonstrate to the world that democratic government is incapable of profiting in the dear school of experience. In view of the future magnitude of the transportation interests the importance of placing its control upon sound principles should not be underestimated.

*Grand Rapids Herald.*—Of course the great transportation companies will be on hand with powerful lobbies to oppose; but the friends of the amendment are better organized and more thoroughly in earnest than ever before, and the indications are that the enemies of the change will not be allowed to shelve the measure as they did during the last session.

*Jackson Patriot.*—It is claimed the Commission should be given greater powers. That body should be given authority to determine as to the reasonableness of the rate, and it should have the power to fix rates and put them in operation at once.

*Grand Rapids Press.*—It is going to be Government regulation or Government ownership, and by too strenuously opposing the one the railroads invite the other.

#### WISCONSIN.

*Superior (Wis.) Telegram.*—Without discussing the merits of the Elkins bill, or the probability of its passage, it is proper to notice that it is a step in the direction asked by the Commission.

Now that the railroad officials have admitted the charges of rate cutting, and pleaded necessity in extenuation, then it seems as if the time had come when the Commission should be given more power or less. If it is desirable to have a Commission possessed with powers of investigation and determination as to conditions, then it follows as



a natural conclusion that the power to rectify the unfair conditions should be lodged somewhere. It is more natural that it should be with the Commission which is charged with the general consideration of transportation matters. In the past the Interstate Commerce Commission has been more or less of a farce because of its lack of power. This condition was recognized by the President in his message to Congress, and, now that there is such indubitable proof as to this matter, it should be enough to convince even Congress that immediate action should be taken one way or the other.

*Racine (Wis.) Journal.*—The Nelson bill, amending the interstate-commerce law, prepared in the interest of the people, seems to fit the case. It is plain enough that if the people are not to be further confirmed in their impression that the Commission is but a plaything—an excuse for a number of estimable citizens to draw commodious salaries—it will be necessary that Congress take some action and endow its measures with the life qualities that will take the dead wood out of it. The Nelson bill proposes to make a distinctive advance, and, if Congress pleases, it can give the Interstate Commission a new lease of life and dress it up with the garment of legal respectability that will bring to it that measure of respect from the transportation companies they have hitherto denied it.

*Oshkosh (Wis.) Times.*—With all its defects the interstate-commerce act has accomplished much good. In the first place it has been construed by the Supreme Court of the United States, and the powers of the Interstate Commerce Commission under the act are beginning to be known. The railroads and big corporations under the law.

Congress has no more important and urgent duty before it, in the interest of the great majority of the shippers of the country, than that of amending the interstate-commerce act so as to rendered it more effective. The demand for this is so overwhelming that it would seem hardly possible that Congress can fail to heed it. There is no other question affecting our domestic affairs as to which the commercial interests of the country are so nearly unanimous. Whatever diversity of opinion there may be as to particular propositions, there is a very general agreement that the law should be strengthened and that the Interstate Commerce Commission should have its powers enlarged. Yet there appears to be doubt whether anything will be done, at least at the present session.

*Milwaukee (Wis.) Free Press.*—If it is the purpose of the railway companies to create a sentiment of opposition to the enactment of the proposed amendment of the interstate-commerce law, their action seems singularly shortsighted, for the effect is likely to be exactly the opposite, and to lead to a keener realization of the absolute necessity of some Government department or commission standing between the railways and the people to see that exact justice is done.

Some of the more progressive railway officials, like those of the Pennsylvania Company, recognize the growing demand for equality in railway rates, the justice of such a demand, and the certainty that a much longer continued policy of opposition may result in the overthrow of the party in power, and will probably lead to the adoption of much more severe measures than are now proposed.

*Milwaukee (Wis.) News.*—The conviction that the only solution of the transportation problem lies in Government ownership and operation is rapidly growing, having received a strong impetus from the

recent merging of vast railway interests. With the immense power possessed by the railway corporations, they are enabled to control legislation. They have their representatives in the legislatures.

*Milwaukee (Wis.) Sentinel.*—The Interstate Commerce Commission merely secures under this act (the Corliss bill) the power which, for instance, is possessed by the Treasury Department, whose orders and decisions are upheld and enforced until decided by the courts to be unlawful or erroneous. In the case of the railroads they would have opportunity to present evidence on their side and to facilitate action of the courts instead of putting obstacles in their way, as heretofore.

*Milwaukee (Wis.) Evening Wisconsin.*—Here is another demonstration of the necessity of clothing the Interstate Commerce Commission with power to enforce its decisions. It is intolerable that boards of railway directors should be permitted to arbitrarily build up one locality and tear down another, to line their own pockets at the expense of the public which gave them their charters and patronage.

There is at the present time, and there will be hereafter, greater necessity than in the past for the existence of a body like the Interstate Commerce Commission, clothed with full powers to protect the people from injustice at the hands of the common carriers. This necessity is the outcome of the consolidation of railway interests. Consolidation and merging and community of interest arrangements, which tend to unite all the railway interests of the country under a common management, tend also to abolish competition. The decisions of the Interstate Commerce Commission should be made immediately operative and continue in force until suspended or overruled by the courts.

Congress should cloth the Commission with the powers proposed to be conferred upon it by the Nelson bill.

*Milwaukee (Wis.) Sentinel.*—One of the results of the recent investigations of the Interstate Commerce Commission has been to develop a respect for the interstate commerce law that has lain dormant for several years in the minds of traffic men; and local representatives of Eastern railroads have recently been cautioned by the traffic officials that the law with its severe penalties for violation is still on the statute books and that infractions are very likely to be followed by punishment.

*Milwaukee Free Press.*—The plan of having an impartial administrative board like the Interstate Commerce Commission, composed of experts in matters of transportation and vested with sufficient power to enforce its findings, seems so reasonable as to lead to the hope that the railway companies will not succeed in defeating the bill to be introduced covering the case.

*Atlanta (Ga.) Journal.*—There is a bill now before Congress to do something that will give the Commission the power to do something. Everybody who can vote for Federal legislation in Georgia's name is for this bill, and we hope it will be passed. Unless Congress shall amend the interstate-commerce act and give the Commission power to enforce it, it had better be repealed.

*Birmingham (Ala.) News.*—The Interstate Commerce Commission can not enforce its orders with sufficient celerity or completeness to do any good, and, for that reason, it is largely an ornamental body. Congress should by all means so enlarge its scope as to give it such

authority that the edicts which it has been designated to issue can be carried to effect.

Really Congress has no very intricate proposition before it in the double plea of the Commission. Give the Commission, to start with, such scope of authority (and no more) as is proper, then clothe it with power to enforce the orders made within its lawful territory and, finally, open the books of the corporations to the public at such periods and within such limitations, just alike to both sides, and the problem has been solved.

*Willimantic (Conn.) Chronicle*.—The amendment but gives the Commission those powers which the framers of the original interstate-commerce law meant to confer and thought they were conferring, and which the railroad companies accepted as within the jurisdiction of the Commission, until about three years ago, when the Supreme Court made a decision which had the effect of rendering the Commission impotent.

*Wichita (Kans.) Eagle*.—The only way to satisfy the people is an amendment to the law insuring prompt relief from discriminations. This can only be done by strict control through the Interstate Commerce Commission, and our Senators and Congressmen can do no less for their constituents than to support the Nelson-Corliss bill.

*Jackson (Miss.) Clarion-Ledger*.—No question to be considered at this session of Congress is of so much importance to the commercial welfare of the country and to the people generally as that embodied in the bill proposing to strengthen the interstate commerce act so as to make the rulings of the Commission binding and effective until reversed by the courts.

*Newark (N. J.) News*.—Failure in practical power to enforce its own decisions has been the crying defect in the operations of the Interstate Commerce Commission. What good is there in jurisdiction if mandatory power exists only in name? There is a strenuous demand for some effective revision of methods of procedure over the whole country, and the strong pleas of commercial bodies have been affirmed by resolutions of a number of State legislatures. Under the present conditions it is generally known that the decisions of the Interstate Commerce Commission are little more than a dead letter when railroads care to ignore them, which is more often than not.

*Grand Forks (N. Dak.) Herald*.—The present session of Congress should be marked by some action that will increase the powers of the Commission to something like what they ought to be. Should Congress expire without something done we may look for the greatest railroad war in history. Some of the railroad men profess to desire the extension of the powers of the Commission, but the fact is on record that the Commission, even with the powers that it does possess, was only created after twenty years of the most active opposition that the railroads could give it.

*Sioux Falls (S. Dak.) Argus-Leader*.—Ever since the passage of the Cullom law, in 1887, efforts have been made to so amend the law as to make it effective. These all have failed. The railroad companies have been able to control a sufficient number of Congressmen to block any effort to make the law effective. It would now appear, however, that either the big lines have concluded to obey the law themselves and help make the weaker ones do it, or that certain of the Congressional strength has turned against them.

*Sioux Falls (S. Dak.) Argus-Leader.*—The railroads have admitted that they pay rebates to favored shippers; that some men get much lower rates than others, and are thus assisted in driving the others out of business. This being so, any right-minded person will join in the demand that the laws be so reconstructed that this sort of thing will be made impossible, or, when it is committed, the offenders will be brought summarily to justice.

*Memphis (Tenn.) Appeal.*—It is clear that the work of the Commission as now constituted is rather futile. It has not been able to prevent discriminations. It has not been able to have its recommendations respected or its decrees enforced. Now, the objection that the gentlemen composing the Commission are not qualified to fix rates is hardly valid, in view of the fact that a circuit judge might exercise that power.

The only question involved is the most practical way of correcting rate discriminations, which are violations of the law. If this is too delicate a matter for the five eminent lawyers to decide, it is too delicate a matter for a circuit judge, or indeed for any legal tribunal, to decide. We shall either have to conclude that there is no practical remedy for rate cutting and unjust rates, and that the Interstate Commerce Commission ought to be abolished, or the power lodged in that tribunal to enforce its judgments as any other court can do.

*Salt Lake (Utah) Herald.*—If Congress, in spite of the railroad lobby, which may be depended upon to make a hard fight against it, should pass the Corliss bill, a long step would be taken in the direction of proper Government supervision of the railroads of the country. The present powers of the Commission consist mainly of the right to use moral suasion—that is, if it finds that a railroad company is giving heavy rebates to large shippers, as was freely admitted at the Chicago hearing, all it can do is to beg the magnates to be good. Of course, the Commissioners are laughed at. Railroad companies, as a rule, don't treat all men alike, unless they are made to do so. The purpose of the Corliss law is to put all on an equal footing, and it should be passed.

WASHINGTON, D. C., May 27, 1902.

Hon. S. B. ELKINS,

*Chairman Committee on Interstate Commerce,  
United States Senate,  
Washington, D. C.*

SIR: The following organizations have indorsed Senate bill 3575, to amend the act to regulate commerce, and have adopted resolutions requesting the Senators and Representatives from their respective States and districts to give the same their active support, in addition to the organizations mentioned in the testimony given by me before your honorable committee on the 9th day of April last, making an aggregate of 94 organizations located in 29 different States.

#### NATIONAL AND STATE ORGANIZATIONS.

Indiana Grain Dealers' Association; Massachusetts State Board of Trade; National Grange, Patrons of Husbandry; National Association of Railway Commissioners; Southern Hardware Jobbers' Association; Utah Wool Growers' Association; Western South Dakota Stock Growers' Association.

## LOCAL ORGANIZATIONS.

Colorado.—Lincoln County Cattle Growers' Association.  
 Connecticut.—Waterbury Business Men's Association.  
                     New Haven Chamber of Commerce.  
 Georgia.—Atlanta Chamber of Commerce.  
 Illinois.—Chicago Merchants' Association.  
 Indiana.—Indianapolis Furniture Manufacturers' Association.  
 Kansas.—Kansas City Board of Trade.  
 Missouri.—St. Louis Millers' Club.  
 New Jersey.—Jersey City Board of Trade.  
 Ohio.—Columbus Board of Trade.  
                     Cleveland Retail Coal Dealers' Association.  
 Pennsylvania.—Philadelphia Commercial Exchange.  
 Wisconsin.—Muscodia Dairy Board.

Very respectfully,

EDWARD P. BACON,  
*Chairman Executive Committee,  
 Interstate Commerce Law Convention.*

THURSDAY, April 17, 1902.

At the sitting of the committee on Thursday, April 17, 1902, the following-named gentlemen appeared: William R. Corwine, representing the Merchants' Association of New York; John V. Barnes, president of the New York Produce Exchange; Samuel T. Hubbard, president of the New York Cotton Exchange; Robert W. Higbie, representing the National Lumber Dealers' Association and the New York Lumber Dealers' Association; John D. Kernan, representing the New York Produce Exchange; David Bingham, chairman of the committee on freight rates and differentials, of the New York Produce Exchange; Charles N. Chadwick, representing the Manufacturers' Association of New York; Mr. Clapp, representing the New York Produce Exchange; T. W. Tomlinson, representing the National Live Stock Exchange and the Chicago Live Stock Exchange; R. S. Lyon, representing the Chicago Board of Trade; Frank Barry, of Milwaukee; N. B. Kelly, secretary of the Trades League of Philadelphia; George F. Mead, representing the Boston Chamber of Commerce and the New England Manufacturers' Association; and J. B. Daish, representing the National Hay Association.

### STATEMENT OF WILLIAM R. CORWINE.

The CHAIRMAN. Please state your residence, business, and whom you represent.

Mr. CORWINE. I represent the Merchants' Association of New York, under instructions from its officers to attend these hearings here. I am also a member of the executive committee appointed by the Interstate Commerce Law Convention, held at St. Louis in November, 1900, which committee prepared the bill now before Congress known as the Nelson-Corliss bill. The Merchants' Association of New York, which

has instructed me to appear here, is a commercial body composed of merchants, manufacturers, bankers, brokers, and business men generally, of nearly all lines of business, aggregating about a thousand members in New York City, and with a large nonresident membership throughout the United States footing up to something like thirty-five thousand merchants, each having what is known as a credit rating. Let me say here that the affairs of the association are controlled by the usual executive officers—a president, first and second vice-presidents, secretary, treasurer, and board of directors. The nonresident members have no voice in the management of the association, but are kept in touch with its work. The subject of this bill came before the board of directors at its meeting in December, and the board adopted a series of resolutions indorsing the Nelson-Corliss bill, a certified copy of which I ask leave to file.

#### RESOLUTIONS, ETC., INTERSTATE COMMERCE ACT.

Whereas a bill known as the Cullom bill was pending in the last Congress, but failed of passage, the purpose of which was to restore to the Interstate Commerce Commission certain of its powers which, by the decisions of various courts, had been taken from it; and

Whereas a large number of commercial bodies throughout the United States, over 40 in number, among which was the Merchants' Association, advocated the passage of this bill, the position of the Merchants' Association having been set forth in an argument prepared by William R. Corwine, of the office staff, in which, while the passage of the bill was advocated, certain suggestions were made which, in the opinion of the officers of the association, ought to be incorporated therein in the shape of amendments; and

Whereas the commercial bodies which were in favor of the measure held a convention at St. Louis in November, 1900, at which an executive committee was appointed to take charge of the matters connected with the bill; and

Whereas Mr. William R. Corwine was recently elected by the members of the committee to fill a vacancy thereon, and, with the consent of the officers of the association, accepted that election and is now a member of that executive committee, the full title of the committee being the "Executive Committee of the Interstate Commerce Law Convention, held at St. Louis, Mo., November 20, 1900," of which Mr. E. P. Bacon, of Milwaukee, Wis., is chairman, on which are a number of prominent gentlemen throughout the country representing large commercial and shipping interests; and

Whereas the bill proposed to be introduced in the current session of Congress differs in certain respects from the Cullom bill of last session, and some of the ideas advanced by the Merchants' Association, through its representative, referred to above, have been incorporated in the new bill; and

Whereas the bill as now drawn has been approved by the members of the executive committee above mentioned, and has received, as we understand it, the approval of the Interstate Commerce Commissioners, and we are informed is accepted by many railway officials as being reasonably fair in its provisions; and

Whereas President Roosevelt, in his annual message to the current Congress, has referred to this subject, and in connection therewith has said:

"The act should be amended. The railway is a public servant. Its rates should be just to and open to all shippers alike. The Government should see to it that within its jurisdiction this is so, and should provide a speedy, inexpensive, and effective remedy to that end. At the same time it must not be forgotten that our railways are the arteries through which the commercial lifeblood of this nation flows. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies. The subject is one of great importance and calls for the earnest attention of the Congress;" and

Whereas the principal provisions of the bill are:

First. That the Commission be invested with power when it is found, after a full hearing of all parties in interest, that an existing rate or differential in rates is unreasonable or unjust, to prescribe the necessary change to be made therein to

bring them into conformity with the provisions of the interstate commerce act. The Commission is to have the same power in relation to the classification of freight articles.

Second. That the rulings of the Commission, issued in pursuance of such hearing, shall be operative twenty days from the service thereof upon the defendant carriers, subject to appeal on the part of the carriers to a circuit court of the United States, these courts being empowered to suspend the operation of the order of the commission, pending the hearing of the appeal, and it is made the duty of the court to vacate such order if found to be illegal or unreasonable upon the facts of the case. Either party may appeal to the Supreme Court.

Third. That imprisonment penalties be done away with, and proper fines substituted therefor, in case of violation of the act. It is believed that this will facilitate the obtaining of evidence necessary for the conviction of guilty parties, which the severe penalties of the present act strongly operate against. The act provides penalties for shippers as well as for carriers: Now, therefore, be it

*Resolved*, That in view of the position already taken by the Merchants' Association, based upon the foregoing statement, the directors of the Merchants' Association hereby approve the general terms of the bill referred to, and ask for its careful consideration and passage by Congress, and indorse the appointment of Mr. William R. Corwine upon the "executive committee of the Interstate Commerce Law Convention, held at St. Louis, Mo., November 20, 1900," and request him and the officers of the association to cooperate as fully as possible in obtaining the passage of this bill or of such amended bill as may finally be agreed upon, if amendments be found necessary, as will insure the end desired.

I hereby certify that the foregoing is a correct copy of the preambles and resolution unanimously adopted by the board of directors of the Merchants' Association of New York at a meeting on the 5th day of December, 1901.

Dated New York, April 14, 1902.

[SEAL.]

S. C. MEAD,

*Assistant Secretary, the Merchants' Association of New York.*

These resolutions, in substance, set forth that in the opinion of the directors something ought to be done by which the decisions or rulings made by the Interstate Commerce Commission may be made effective; that in the judgment of the directors the provisions of the bill which had been submitted to them—they having considerable knowledge of the general subject—would produce the results desired by shippers without undue hardships to the carriers.

The question seemed to us to resolve itself into the very simple one of whether or not the Interstate Commerce Commission should be given powers which it seems to the shippers they ought to have, or whether or not the Commission should be abolished. As the Interstate Commerce Commission stands now, it seems to be nothing more than a statistical bureau, composed of very estimable gentlemen, in whose integrity and ability the public have confidence, but whose powers seem to be limited to the issuing of statistical information and propaganda at various times, which people read, but to which they pay no attention. It seems to us that, owing to the changed conditions existing throughout the country, to the community of interest chiefly, which is bringing the great railway systems into closer harmony, it would be wise, in fact, is necessary, that something be done which, on the one hand, will not be too harsh against the railroad interests, which we recognize as being a very important interest in the country, but which, on the other hand, will conserve the interests of the shippers.

How far it is wise to go is of course a question which Congress must determine. I am not here for the purpose of voicing any specific complaints of shippers just at this particular moment. We have had a number of such complaints, and, in fact, our position in this matter grew almost entirely out of the very numerous complaints which were

filed with us and which we were asked to consider at the time the railroads, in the latter part of 1899 and in the early part of 1900, arbitrarily and without any hearings or conferences with shippers, attempted to obtain a larger revenue, not by an increase of rates—to which I think as a rule shippers would not have objected, owing to the prosperous condition of the country—but to a very violent change in the method of classification.

It is not necessary to go into the details of that subject. These details were fully laid before you at the last session, when the Cullom bill was being considered. Mr. J. M. Langley, representing our association, testified before this committee, and went into a very thorough analysis of the changes made by the different railways of the country in regard to classifications and the percentages of increase in items, showing the effect of those percentages upon the rates and the average increase of rates which resulted from that change of classification. We felt then and we feel now that the method pursued was not a fair or an equitable method; that it did result and has continued to result in a very serious detriment to many lines of industry, more particularly on account of the arbitrary change which the railroads made in what may be called the widening of the difference between the carload lot and less than carload lot.

I am not an expert on the subject of rates, Mr. Chairman, but there are a few general principles which we all understand fully. In the particular changes I have in mind, where carload lots were classed, say, fifth class, and less than carload lots were classified in the fourth class, the railroads in the new classification of 1900 kept the carload in the class in which it had stood for many years, and advanced the less than carload lots to a higher classification, for instance, the third class, thereby making the difference of two classes between the carload and less than carload lots. This served to advance the rate charged for less than carload lots. We claim, without going into the details as to the effect of this change upon the rate, that it has necessarily worked injuriously to the small shipper through lessening the area of his distribution. The tendency of the times is toward concentration in commercial industries and transportation. There is a very serious endeavor on the part of thinking men of the country to ascertain how far this concentration is being brought about by natural conditions, and how far it is artificial. Monopolies are not desired by the people, but how far legislative bodies ought to go in an endeavor so to regulate the results of conditions as to minimize the evils complained of is a serious problem.

These changed conditions, whether due to natural causes—to the growth of business resulting in the creation of great industries throughout the world—tend to drive the small man out of business or to force him to combine with the larger organizations. We ought not unduly or arbitrarily make it harder for him to live. The narrowing of the area of distribution, whether it be of New York, of Chicago, of St. Louis, of Minneapolis, of Atlanta, or of New Orleans, or any other distributing center, is certain to contract the business of the small man. By widening the difference between carload and the less than carload lots, you make it harder for him to compete with the men who get the carload rate. That is so plain that it seems to me to need no explanation.



As I said, I think, at the outset, there is no disposition on the part of our people to harass the railways. The consideration, originally by the Merchants' Association, of the question under discussion was due to the fact that there were in effect certain discriminations as between localities, which operated unfavorably as against other localities; and as those discriminations operated against us locally, self-preservation forced the organization of this institution, for the purpose of seeing if it were not possible to place New York upon a parity with other localities by doing away with the discriminating rates in freight and passenger business which were being practiced.

I am frank to say, and am very glad to be able to say, that in all the relations which we have had with the railways the latter have been fair with us. They have lived up always, not only to the letter, but to the spirit of the agreements which they have made with us. And I am glad and proud to say that on our part we have done the same. Mr. Blanchard, whom you knew, and who is now dead, put himself on record in writing as to the fairness of the dealings on the part of the Merchants' Association of New York with the great railway interests of the country.

We feel, as I have said, that there ought to be some power somewhere, either in the present Interstate Commerce Commission or in some other body to be created, if need be, by or through which these two great interests of shipper and carrier, which are very largely the bone and sinew of the country, may be conserved fairly and equitably to all. So far as we have been able to study the subject, it seems to us that the provisions of the so-called Nelson-Corliss bill meet the situation as the conditions are to-day.

Several criticisms have been made by those opposed to that bill. One that I have in mind, that has been urged quite strenuously, is that its operations will be unfair to the railroads, because under it the decisions of the Interstate Commerce Commission would go into effect practically immediately, and remain in effect for two years, even though the railroads had the right of appeal to the circuit court, but that, notwithstanding the appeal, the decision of the Commission would remain in force and effect while the appeal was pending. In other words, it is claimed by the legal fraternity, who are investigating the bill from the railroad point of view, that this is a reversal of general legal proceedings, where an appeal from the decision of a lower court stays the effect of the decision which has been rendered until such time as the appeal may have been determined. It seems to me that those who are making that criticism are looking from the wrong point of view. I do not want to be unfair or unjust or appear to be put in the position of asking for that which is harsh or arbitrary. But I do not view the Interstate Commerce Commission quite in that light.

It seems to me—if I may use a phrase which does not, perhaps, exactly fit the situation, but which, in general, describes it—that we may look upon that Commission more as a legislative than as a judicial body. It is not a body appointed, as are the judges of the Supreme Court of the United States and its subordinate branches, with general powers to interpret the laws that are upon the statute books, but is a body of men, five in number, appointed to determine certain minor—or great, if you like—questions of fact raised by the specific act under which that body has been created, and their jurisdiction goes no farther.

In other words, it seems to me that we might better make a comparison of that body with the Treasury Department or any department of the Government which has powers of that kind. The Treasury Department, for instance, has charge of the customs, in which an enormous amount of money is involved and where there are very important questions, in the solution of which there is a great deal of friction. The decision of the Department becomes, as I understand it, binding, although the person against whom the decision is rendered has the right of appeal—a right which the law gives him. But that decision is binding not only as against him, but as against all others under like conditions, until the courts have determined that the original decision was wrong or unconstitutional, or not in accordance with the law, as you care to put it. That is the way I think you will find we look at this matter, and it occurs to me that that is the solution, from our point of view.

There is another criticism that has been made.

Senator TILLMAN. Mr. Chairman, before the gentleman leaves that point I should like to ask him a question.

The CHAIRMAN. Certainly.

Senator TILLMAN. As I understand your contention, or the contention of the association which you represent, it is that the Interstate Commerce Commission, composed of men who devote, or are supposed to devote, their whole study and time to questions of transportation and railroad matters, are fully competent to make the first decision as to what would be a just and equitable rate; whereas the judges of the courts, who are engaged in the study and determination of questions of law not specifically connected with those matters, and have made no study of them and can not make them a study, but must determine them from the showing made before them, and are not calculated to have any special understanding of railroad matters, are more competent to decide these questions equitably than the Interstate Commerce Commission. Is that your contention?

Mr. CORWINE. Practically, yes. We believe that the Interstate Commerce Commission is thoroughly capable of reaching a determination as to the reasonableness or the unreasonableness, the fairness or unfairness, of a rate, certainly as well as and possibly better than the determination of that question could be reached by a court.

Senator TILLMAN. Has it occurred to you that the judges of the United States courts are selected by the President and confirmed by the Senate, just as the members of the Interstate Commerce Commission are selected by the President and confirmed by the Senate; that, while they had their appointments from practically the same source, they are in effect chosen for supposed fitness and qualifications, and that choice is ratified by the Senate? Would you not, therefore, imagine that the object to be accomplished through their appointments for the specific work that each is to do would be all equally well performed?

Mr. CORWINE. Yes. I think the appointment of the Interstate Commerce Commission is thoroughly safe-guarded, and we may rest assured that this conservative body, the Senate, will pass upon the appointments which the President has made and may make from time to time, so that it is reasonably sure that good men will get in. We are not at all afraid of the contrary of that proposition any more than we are afraid of our courts, of which we are proud.

Senator TILLMAN. Then why would you have any appeal to the courts at all, other than probably for the rectification of some error that might be shown by argument that the Commission had made in a case where the Commission might not have had the advantage of listening to that argument? Is that the reason?

Mr. CORWINE. Do you think it wise, Mr. Senator, that there should be given to any one body the absolute power to determine arbitrarily any point without giving the citizen or corporation the right of appeal that exists in all other actions that are taken? If the question is broad and important enough it goes to the Supreme Court of the United States.

Senator TILLMAN. Primarily I would not think it wise to make an arbitrary tribunal. But considering the specific scope of their duties it would appear to me, at least to the extent to which you contend, that their action should be final until reversed—in other words, that it should go into effect. You are arguing, as I understand, for the immediate results to follow the decision of the Interstate Commerce Commission.

Mr. CORWINE. Yes.

Senator TILLMAN. And the opponents of that view hold that they ought not to go into effect, but that the appeal ought to obtain at once.

Mr. CORWINE. The right of appeal ought to obtain at once, it seems to me, and their rulings ought to be like the rulings of the Treasury Department, which become operative as soon as made and remain operative until reversed by the courts.

Senator TILLMAN. I should be glad to have you file with the committee a list of the membership of your association, so that we may form some idea of its scope and the qualifications, respectability, and character of its membership, taking it for granted, of course, that the members are all highly respectable. Still we would like to know the source whence these propositions come.

Mr. CORWINE. I will do that with very great pleasure. The resident membership is about one thousand.

The CHAIRMAN. We can put it on file. It need not be put in the record.

Mr. CORWINE. I will submit such a list with this understanding: A resolution was adopted by the board, at the time the organization was formed, that we would not publish a list of our membership, because it was determined that we did not want it used in any way for advertising purposes. But for the benefit of the committee I will file such a list, with the understanding that it is not to be published.

Senator TILLMAN. My object in trying to get at the source of these propositions is this: As I understand, we are confronted in the Senate, or are likely to be, with the suggestion that we have been considering arguments and statements in this committee from those who are more deeply interested in protecting the railroads than in protecting the people. If this committee should succeed in agreeing upon a bill involving the principle you have just set forth, of lodging the power somewhere to obtain redress for shippers and to have the decision go into effect immediately, when we come to present the case before the Senate we are likely to be met by some suggestion of the kind I have mentioned. We have had a great many petitions and communications of one kind and another urging this action; at least they have for years.

been coming to me as a member of this committee, and I presume they have to you, Mr. Chairman.

The CHAIRMAN. Yes.

Senator TILLMAN. There have also come very urgent appeals from apparently a great many sources, but appeals so similar in character that it has occurred to me that they must have originated from one source, in regard to this 20 per cent reduction of sugar bounty, and I have been skeptical as to the necessity of that reduction and as to the responsibility of the parties who have signed those petitions. I should like to have as good evidence as possible to prove that there is a real demand from the citizens of this country for this proposed legislation. I believe there is, and I sympathize with it, and therefore I should like to be able to show that the merchants, manufacturers, and other parties interested would be glad to have Congress give them relief from present unbearable conditions, or abolish the commission and let us quit fooling with it.

Mr. CORWINE. All right; I will arrange that for you. Will you let me put into the record the names of the officers?

Senator TILLMAN. It is not the names of the officers at all that we want.

Mr. CORWINE. The membership has changed very much.

Senator TILLMAN. Why should there be any desire for secrecy on the part of this association in regard to its membership? Are they afraid that the railroads will discriminate against them in business?

Mr. CORWINE. No; they are not afraid of anything on God's footstool.

Senator TILLMAN. Then we ought to have their names.

Mr. CORWINE. They have simply considered it as good business judgment not to publish such a list. That resolution was adopted in 1897, when certain members tried to do certain things not necessary to be disclosed here for the purpose of advertising themselves through their connection with the institution, and it was then determined that it would be best and wisest to keep its membership from being published, and also for the reason that it would keep the members from being subjected to bothersome solicitation.

Senator TILLMAN. Do your members meet in convention, or how do they formulate and prosecute their work? How did they send you here, for instance?

Mr. CORWINE. I was about to explain that when you interrupted me. I was about to offer to furnish the names of the officers when you said you did not care for them.

Senator TILLMAN. I would like to have the whole thing.

Mr. CORWINE. I will say that the Merchants' Association holds its election annually in January of each year, at which the directors are elected. There are fifteen of them, and to them are given the power and authority, under the constitution and by-laws, to manage the affairs of the association. They have the power to do anything they like within the scope of their authority. If any person not a member of the board has at any time a grievance, and thinks the board has managed unfairly or does not fairly represent the sense of the association, that person has the power, under our rules, to have a special meeting of the members called and to protest, and the members have the power to oust the directors at the next election if they conclude that the affairs of the association have not been properly managed.

Senator TILLMAN. You mean the association has that power?

Mr. CORWINE. The members can do it.

Senator TILLMAN. That is a strange power to be lodged in the hands of one member.

Mr. CORWINE. I will here give the names of the officers and directors who are still holding office and will continue in office until the next annual meeting in January, 1903, so far as I am able to refresh my memory from an old letter head which I happen to have with me:

Mr. D. Leroy Dresser, the president, is the head of the dry goods commission house of Dresser & Co., which he started himself when comparatively a young man.

Mr. John C. Juhring, first vice-president, is a member of the wholesale grocery house of Francis H. Leggett & Co., in which he has grown up from boyhood.

Mr. John C. Eames, is second vice-president now. He is the second vice-president and general manager of the H. B. Clafin Company, which concern I take it you all know as being a very large dry goods house in New York.

Mr. Charles H. Webb, treasurer, is a member of the firm of J. H. Dunham & Co., a large dry goods jobbing house in New York, in which he has grown up from boyhood.

Mr. William F. King, who was the founder of the Merchants' Association and its first president, is a member of the dry goods house of Calhoun, Robins & Co., in which he has grown up from boyhood.

Mr. George F. Crane, of Baring, Magoun & Co., bankers; he worked his way up into the firm from a boy.

Mr. Adolph Openhym is a member of the firm of William Openhym & Sons, a dry goods commission house dealing principally in silks and located in New York. That firm was founded by his father, I think.

Mr. George L. Duval is the resident member in the United States of the firm of Beeche, Duval & Co. And, by the way, he worked his way up from boyhood.

Mr. Gustav H. Schwab, the general manager of the North German Lloyd Steamship Company, in New York, with which he has been connected ever since he was a boy.

Mr. Frank Squier, a member of the firm of Perkins, Goodwin & Co., wholesale paper manufacturing and jobbing house. I do not know his history, whether he has been there all his life or not.

In addition, there were elected at the last meeting Mr. William Edmond Curtis, who was formerly Assistant Secretary of the Treasury under Secretary Carlisle during Mr. Cleveland's last Administration; Mr. Herbert L. Satterlee, lawyer, at 120 Broadway, and Mr. Henry R. Towne, the president of the Yale and Towne Manufacturing Company, of New York, with headquarters in New York City. Those three gentlemen were elected last January to take the places made vacant by the retirement of Mr. Alvah Trowbridge, who had been president of the Ninth National Bank; Mr. Corcellus H. Hackett, who is a manufacturer, and of Mr. John H. Starin, of the Starin Transportation Company, of New York. As I say, those three gentlemen's terms expired, and as they did not want to be reelected, the three gentlemen I have named were elected to take their places.

The directors subsequently elected officers, as follows: Mr. D. Leroy

Dresser, president; Mr. John C. Juhring, first vice-president; Mr. John C. Eames, second vice-president; Mr. Charles H. Webb, treasurer, and Mr. W. A. Marble, secretary. Mr. Marble went into the board to fill a vacancy. He is the vice-president of the R. & G. Corset Manufacturing Company. None of the officers or directors draw any salary or compensation of any kind.

I will also say that Mr. James B. Dill had served without charge as counsel for the association from the time of its organization; but, feeling that he could not attend to the work any longer, he resigned in January, when the Hon. John G. Carlisle, formerly Secretary of the Treasury, was unanimously elected by the board as counsel of the association.

That, Mr. Senator, represents the working force of the Merchants' Association.

Senator TILLMAN. I take it that the rank and file are very eminently respectable merchants and manufacturers. Why not send their names also?

Mr. CORWINE. I have no objection to sending you the list, if you really want it. We keep it on a card index, and it will only take a few days to prepare it.

Senator TILLMAN. I hope you do not understand that I have even suspected for a moment that yours is not a bona fide association of very great proportions, and of wealth and respectability. I simply want to have the proof, because when we get this bill before the Senate for consideration, if we ever do, we are going to be met with the charge that this bill emanated from the Interstate Commerce Commission or from those who have been working in its interest. Something like that has been the cry that has been heard ever since this subject was first agitated.

Mr. CORWINE. I think I can get the list for the committee, although in saying that I may be assuming more than I shall have the power to perform.

The CHAIRMAN. All right.

Mr. CORWINE. I have nothing more to say to the committee, I believe.

Senator FOSTER. Before you give way to the next gentleman, I should like to put a question. I understand that you consider that the Commission has been practically shorn, by the decisions of the Supreme Court, of all authority and power; that now it is but little more than a bureau of statistical information, rather than a body armed with the power of control over the subject matter, for which it was originally created. In your opinion, should that Commission be continued unless there be legislation giving it greater power and greater authority for carrying out what we generally believe to have been the objects and purposes of that Commission.

Mr. CORWINE. I do not quite catch your idea, Senator. If I may, I will answer it in this way: I, for one, as a humble layman, believe that when the interstate-commerce law was enacted in 1887—that is the year, if my memory serves me rightly—it was intended that there should be somebody with such powers as are now sought to be embodied in the bill before the committee. That is the impression that I, as a layman, have always had. Not being a lawyer I may not be able to determine the nice distinctions of language, as a court can do. But

by the decisions rendered by the Supreme Court, in some cases from New York and elsewhere, it was determined, as I understand it, not that they were shorn of any power, but that they never had had the power. This decision was rendered as a result of the judicial interpretation of the statute which came before the court in these various cases that were carried to the Supreme Court. Therefore, the Commission seems to me to be nothing more nor less than a statistical bureau, and it does not seem to me to be necessary to keep a body of that kind in existence, eminently respectable though its membership be, unless it should be given more power than it now has.

Senator FOSTER. I used the word "shorn." Probably you are right in saying that the Supreme Court decided that it never had the power. But once the Supreme Court has denied the existence of this power, is it useless to continue this Commission?

Mr. CORWINE. As a Commission, I should say no. It seems to me that it would be beneficial for the Government always to maintain some kind of a bureau, perhaps not so expensive and elaborate a bureau as this, in which there can be collated the railroad statistics of the country, which are very useful and serve a most excellent purpose, both for action by Congress and for discussion by the public as to the conditions existing among railroads. They are gotten up in better shape there than anywhere else in the country. They are far better than Poor's Manual, which it would require a railroad expert to understand. They are better than the data furnished by the financial papers of New York and Chicago. But, as a Commission, that body of five members it seems to me ought to go out of existence if they can not serve more useful purposes; and it seems to me, also, that they do not serve those purposes now.

Senator FOSTER. You believe in giving them additional power?

Mr. CORWINE. I do.

Senator FOSTER. That is, your association believes that?

Mr. CORWINE. They do.

Senator FOSTER. That the good of the country will be better subserved by conferring this additional power upon the Interstate Commerce Commission?

Mr. CORWINE. I think it will. I think it will work out great benefit all round.

Senator FOSTER. Have you read the Elkins bill?

Mr. CORWINE. I saw the Elkins bill as it was published in the press at the time it came out. I have understood that there have been some changes made in it or that some are about to be made. I have not seen it in its present printed form, and I should very much like to have a copy of it while I am here. I had intended to get one.

The CHAIRMAN. I hand you a copy of the bill (S. 3521).

Mr. CORWINE. I only saw the substance of it as published in the papers.

The CHAIRMAN. We are very much obliged to you, Mr. Corwine.

Mr. CORWINE. I am very much obliged to you for your courtesy, also.

## STATEMENT OF ROBERT W. HIGBIE.

The CHAIRMAN. Please give your business address and whom you represent.

Mr. HIGBIE. I represent the committee on legislation of the National Wholesale Lumber Dealers' Association. My business address is 45 Broadway, New York. I am also a manufacturer of lumber in the State of West Virginia.

This association which I have the honor to represent before this committee is composed of several hundred of the representative lumber dealers of the United States, with a membership extending from Maine to Minnesota on the north, to the south and southwest, Alabama and Arkansas, and thence across to the Atlantic seaboard.

This association has indorsed the principles of the Nelson bill and also certain features of the Elkins bill for two or three successive years in their annual conventions. The board of trustees of our association appointed a small committee to represent the association before Congress in the advocacy, in a general way, of these two bills, more particularly the Nelson bill.

We feel, Senators, that the necessity exists for some additional legislation by way of amendment to the interstate-commerce act, and the necessity for that is so apparent that it is not necessary for me to take up your valuable time in making any extended argument along that line, but rather to suggest our thought as to how the act should be amended and in what respect the powers of the Commission should be increased.

There are four things, particularly, in which our association is very much interested.

In the first place, we think the railroads should be placed in the position where they should treat all shippers alike; that they should charge like pay for like service under similar conditions.

In the second place, we feel that when an important case has been brought before the Interstate Commerce Commission and they have carefully investigated it and decided as to what is a proper rate or proper adjustment between railroads and shippers, of course conserving the interests of both, that they should have the power to say what is right, and, having said it, that they should have the power to enforce it. This covers the second and third of the additional powers for which we are asking.

In the next and last place, we think that these orders, when once entered, should be made effective within a reasonable time.

The act as originally passed, and as interpreted by the Commission itself, practically covered most of these points which we are now asking. I am not undertaking to say whether the original law actually conferred these powers or not. I simply say that the interpretation of that act by the Commission itself was that they had, and as a matter of fact they used, most of these powers for several years.

The courts have, however, in various decisions in cases coming before them under this act, held that the Commission did not possess certain of the powers which they had been exercising and which they thought the act conferred upon them, and as a result of these decisions the Commission has been compelled to desist from the exercise of those powers.



For instance, one, which is the only one I shall speak of, is that part of the act which is known as the long and short haul clause. As I understand it, this clause was put in the act for the benefit of small individual shippers, whose shipments were made at noncompetitive points. The courts have held, however, that the conditions under which shipments were made by the railroads were such that the railroads in certain cases were justified in charging a less rate for a long haul than for a short haul. The result is that the individual shipper from what we term way stations is left high and dry and is compelled to pay whatever the railroad sees fit to charge him from that particular point, because he has no other way of getting his property to the markets.

I know of no case which better illustrates the necessity of some change in that particular than a case which the association I am representing here at one time brought before the Interstate Commerce Commission. I will very briefly state the case and the developments arising therefrom. The National Wholesale Lumber Dealers' Association lodged a complaint against the Pennsylvania Railroad, the Baltimore and Ohio, and the Norfolk and Western railroads. The basis of that complaint was that shippers on the Norfolk and Western were discriminated against in comparison with shippers from the Chesapeake and Ohio and from the Baltimore and Ohio, and that the rates were very much higher to them than were given to their competitors on other lines, and that those rates were unreasonable, unjust, and discriminative. The testimony in that case brought out these facts: That the three railroads named were under the practical control of the Pennsylvania Railroad and to all intents and purposes were one system. It also brought out this fact: That the three roads had connections with and entrances into the city of Cincinnati; that the rate on lumber from Cincinnati to New York was  $21\frac{1}{2}$  cents per hundred pounds; that all of these roads were parallel and shipments were made from all of them to the New York market; and this additional fact, that two of these roads gave to points east of Cincinnati the benefit of the Cincinnati rate. But the Norfolk and Western in their wisdom saw fit to refuse to give the  $21\frac{1}{2}$ -cent rate to its shippers east of Cincinnati, but charged such shippers an average rate of  $27\frac{1}{2}$  cents, and the result was that such shippers on the Norfolk and Western were compelled to pay from 30 to 35 per cent more than the shippers on the two parallel roads.

The Commission, in writing the decision in that case, closed by saying that inasmuch as these three roads were under the control of the Pennsylvania system, they saw no reason why all the shippers on the three lines should not be treated alike. The order that finally came in reference to this matter from the Commission, instead of reducing the rate, as the opinion would seem to have indicated we had reason to expect, only reduced the rate 10 per cent, still leaving us 15 or 20 per cent above the rates for shippers from the other two roads. I infer and assume, although I have no authority for the assumption, that the reason why the larger reduction was not ordered was because the railroads might not have been willing to obey it. But they did obey the order of the Commission. If, however, the Commission had the power which we are asking now to be conferred upon them and had followed logically the line of the opinion in that case, the shippers on those three roads would have been placed upon an equal footing. As it is,

the shippers on the Norfolk and Western, of whom I happen to be one, are still at the disadvantage of at least \$1 per thousand.

The CHAIRMAN. On the rate to New York?

Mr. HIGBIE. Yes. I have had prepared a table which I will file with the committee, showing the distances, the rate in cents per hundred, per ton per mile, on lumber from some 25 or 30 different points to New York City.

These points cover twelve to fifteen States and fairly represent the shippers of lumber from inland points to New York City. In selecting these various points I wanted to be fair, and so I showed no preference at all and made no selection except the natural one. I had no foreknowledge of what the result would show when tabulated in this form. The result is as follows: The point enjoying the most favorable rate to New York City is Menominee, Mich., which has a rate of 0.423 cent per ton per mile, this distance being 1,182 miles and the rate being 25 cents per hundred. The point which is compelled to pay the highest rate is Elizabethton, Tenn. The distance from that point to New York is barely more than half the distance of Menominee from New York, being but 628 miles. The rate per hundred is 28 cents, or three cents per hundred more for practically half the distance, while this rate per ton per mile is 0.892 cent, or more than double. The intermediate points on the table vary.

The CHAIRMAN. Does your table show what lines those points are on?

Mr. HIGBIE. It does not.

The CHAIRMAN. That would add a valuable feature if you would show the lines.

Mr. HIGBIE. I will be glad to make that addition.

The CHAIRMAN. If it will not interrupt you, and with the consent of the committee, I suggest that you put in an additional column to your table showing, for instance, that lumber from Menominee to New York passes over the following lines, and from Elizabethton to New York over the following lines.

Mr. HIGBIE. I shall be very glad to do that, Senator.

The CHAIRMAN. I think that would look well and would be valuable information.

Following is the amended statement here referred to:

*Statement showing the distance, rate in cents per 100 pounds, and rate per ton per mile on lumber from points shown below to New York, N. Y.*

Dis- tance.	From—	Rate per 100 pounds.	Rate per ton per mile.
		<i>Cents.</i>	<i>Cents.</i>
1,182	Menominee, Mich.....	25	0.423
1,388	Duluth, Minn.....	33	.476
1,348	Ashland, Wis.....	33	.489
1,209	Memphis, Tenn.....	31	.512
818	Indianapolis, Ind.....	22	.538
915	Chicago, Ill.....	25	.546
1,097	Appleton, Wis.....	31	.565
757	Cincinnati, Ohio.....	21½	.568
980	Petoskey, Mich.....	28	.571
865	Louisville, Ky.....	25	.578
715	Bay City, Mich.....	21	.588
709	Dayton, Ohio.....	21	.592
702	Saginaw, Mich.....	21	.589
1,273	Helena, Ark.....	40	.628
685	Ironton, Ohio.....	21½	.628
683	Asbland, Ky.....	21½	.629
411	Buffalo, N. Y.....	13	.632
671	Kenova, W. Va.....	21½	.641

Statement showing the distance, rate in cents per 100 pounds, and rate per ton per mile on lumber from points shown below to New York, N. Y.—Continued.

Dis- tance.	From—	Rate per 100 pounds.	Rate per ton per per mile.
		<i>Cents.</i>	<i>Cents.</i>
667	Huntington, W. Va .....	21½	0.645
479	Grafton, W. Va .....	16	.668
830	Murphey, N. C .....	28	.675
899	Chattanooga, Tenn .....	31	.689
615	Charleston, W. Va .....	21½	.699
717	Norton, W. Va .....	25½	.711
604	Camden-on-Gauley, W. Va .....	21½	.712
584	Wilmington, N. C .....	21	.719
788	Knoxville, Tenn .....	28½	.723
316	Oswego, N. Y .....	11½	.728
1,050	Nashville, Tenn .....	38½	.733
680	Panther, W. Va .....	25½	.750
705	Asheville, N. C .....	27	.766
392	Elizabeth City, N. C .....	15½	.791
492	Elkins, W. Va .....	21½	.874
628	Elizabethton, Tenn .....	28	.892

## MENOMINEE, MICH.

C., M. & St. P. Ry., or C. & N. W. Ry. to Chicago, and via any line east of Chicago

## DULUTH, MINN.

C. & N. W. Ry., or Wisconsin Central Ry., to Chicago; via any line east of Chicago, Ill.

D., S. S. & A. Ry. Canadian Pacific Ry. N. Y. C. & H. R. R. R.

## ASHLAND, WIS.

C. & N. W. Ry., or Wisconsin Central Ry., to Chicago, and any line east of Chicago, Ill.

## MEMPHIS, TENN.

Southern Ry.  
Penna. R. R.

K. C., M. & B. R. R.  
Southern Ry.  
Penna. R. R.

L. & N. R. R.  
C. & O. Ry.  
Penna. R. R.

K. C., M. & B. R. R.  
Southern Ry.  
Seaboard Air Line R. R.  
F. & P. R. R.  
Penna. R. R.

L. & N. R. R.  
B. & O. R. R.  
P. & R. Ry.  
C. R. R. of N. J.

## INDIANAPOLIS, IND.

C., C., C. & St. L. Ry. }  
L. S. & M. S. Ry. } to Buffalo.  
N. Y., C. & St. L. R. R. }

L. E. & W. R. R. }  
L. S. & M. S. Ry. Co. } to Buffalo  
N. Y., C. & St. L. R. R. }

Penna. Co.  
Penna. R. R.

East of Buffalo:  
West Shore R. R.  
D., L. & W. R. R.  
N. Y. C. & H. R. R. R.  
L. Valley R. R.  
R., W. & O. R. R.  
N. Y., O. & W. Ry.

## CHICAGO, ILL.

B. & O. R. R.	C., C., C. & St. R. Ry.	L. S. & M. S. Ry.
P. & R. Ry.	L. S. & M. S. Ry.	N. Y. C. & H. R. R. R.
C. R. R. of N. J.	N. Y. C. & H. R. R. R.	
P., C., C. & St. L. Ry.	P., Ft. W. & C Ry.	Mich. Cent. R. R.
Penna. R. R.	Penna. R. R.	N. Y. C. & H. R. R. R.
N. Y., C. & St. L. R. R.		
to Buffalo.	Grand Trunk Ry. and all lines east of Buffalo.	
West Shore R. R.	} east of Buffalo.	
D., L. & W. R. R.		
Lehigh Valley Ry.		
Wabash R. R. and all lines east of Buffalo.		

## APPLETON, WIS.

C., M. & St. P. Ry. or C. & N. W. Ry. to Chicago, Ill., and any lines east of Chicago

## CINCINNATI, OHIO.

B. & O. So. W. Ry.	C. & O. Ry.	C., C., C. & St. L. Ry.	} To Buffalo
B. & O. R. R.	Penna R. R.	L. S. & M. S. Ry.	
P. & R. Ry.		N. Y., S. & St. L. R. R.	
C. R. R. of N. J.			
N. & W. R. R.	N. & W. R. R.	West Shore R. R.	} East of Buffalo
Cumb. Valley R. R.	N. Y., P. & N. R. R.	N. Y. C. & H. R. R. R.	
Penna. R. R.	Penna. R. R.	D., L. & W. R. R.	
		Lehigh Valley R. R.	
		R., W. & O. R. R.	
	Erie R. R.	N. Y., O. & W. Ry.	

## PETOSKEY, MICH.

Grand Rapids & Indiana Ry.  
Penna Co. Penna. R. R.

## LOUISVILLE, KY.

B. & O. So. W. R. R.	C. & O. Ry.	C. & O. Ry.
B. & O. R. R.	Penna. R. R.	N. Y., P. & N. R. R.
P. & R. Ry.		Penna. R. R.
C. R. R. of N. J.		
C., C., C. & St. L. Ry.	} To Buffalo.	L. & N. R. R.
L. S. & M. S. Ry.		B. & O. So. W. R. R.
N. Y., C. & St. L. R. R.		R. & O. R. R.
		P. & R. Ry.
		C. R. R. of N. J.
West Shore R. R.	} East of Buffalo.	Southern Ry.
N. Y. C. & H. R. R. R.		Pennsylvania R. R.
D., L. & W. R. R.		
Erie R. R.		
L. Valley R. R.		
R., W. & O. R. R.		
N. Y., O. & W. R. R.		
		P., C., C. & St. L. Ry
		Penna. R. R.

## BAY CITY, MICH.

Michigan Central R. R.	R. to Buffalo.		
West Shore R. R.	} East of Buffalo.	Pere Marquette R. R.	} To Buffalo.
N. Y. C. & H. R. R. R.		Grand Trunk Ry.	
D., L. & W. R. R.		L. S. & M. S. Ry.	
Erie R. R.		Mich. Cent. R. R.	
L. Valley R. R.			
R., W. & O. R. R.			
N. Y., O. & W. Ry.			
Pere Marquette R. R.			
Grand Trunk Ry. to Buffalo.			
West Shore R. R.	} East of Buffalo.	West Shore R. R.	} East of Buffalo.
N. Y. C. & H. R. R. R.		N. Y. C. & H. R. R. R.	
D., L. & W. R. R.		D., L. & W. R. R.	
Erie R. R.		Erie R. R.	
L. Valley R. R.		L. Valley R. R.	
R., W. & O. R. R.		R., W. & O. R. R.	
N. Y., O. & W. Ry.		N. Y., O. & W. R. R.	
West Shore R. R.	} East of Buffalo.		
N. Y. C. & H. R. R. R.			
D., L. & W. R. R.			
Erie R. R.			
L. Valley R. R.			
R., W. & O. R. R.			
N. Y., O. & W. Ry.			

## DAYTON, OHIO.

C. C. C. & St. L. Ry.	} to Buffalo.	Erie R. R.
L. E. & W. R. R.		
L. S. & M. S. Ry.		Penna. Co.
or		
N. Y. C. & St. L. R. R.		Penna. R. R.
West Shore R. R.	} East of Buffalo.	
D. L. & W. R. R.		
N. Y. C. & H. R. R. R.		
Erie R. R.		
L. Valley R. R.		
R. W. & O. R. R.		
N. Y. O. & W. R. R.		

## SAGINAW, MICH.

Michigan Central R. R. to Buffalo.

Pere Marquette R. R.	} to Buffalo.
Grand Trunk Ry.	
L. S. & M. S. Ry.	
Mich. Cent. R. R.	

Pere Marquette R. R.  
Grand Trunk Ry. to Buffalo.

West Shore R. R.	} East of Buffalo.
N. Y. C. & H. R. R. R.	
Erie R. R.	
D. L. & W. R. R.	
Lehigh Valley R. R.	
R. W. & O. R. R.	
N. Y. O. & W. Ry.	

## HELENA, ARK.

Ill. Cent. R. R.	Ill. Cent. R. R.	Ill. Cent. R. R.
Southern Ry.	K. C., M. & B. R. R.	L. & N. R. R.
Penna. R. R.	Southern Ry.	C. & O. Ry.
	Penna. R. R.	Penna. R. R.
Ill. Cent. R. R.	Ill. Cent. R. R.	Ill. Cent. R. R.
K. C., M. & B. R. R.	B. & O. So. W. R. R.	K. C., M. & B. R. R.
S. A. Line R. R.	B. & O. R. R.	Georgia R. R.
R. F. & P. R. R.	P. & R. Ry.	A. C. Line R. R.
Penna. R. R.	C. R. R. of N. J.	R. F. & P. R. R.
		Penna. R. R.

## HELENA, ARK.—continued.

Ill. Cent. R. R.  
N. C. & St. L. Ry.  
L. & N. R. R.  
Ches. & Ohio Ry.  
Penna. R. R.

St. L. I. M. & Co., Mo. Pac.  
to East St. Louis, and  
any lines east of East St.  
Louis.

ASHLAND, KY.; KENOVA, W. VA.; HUNTINGTON, W. VA.; PANTHER, VA., AND IRONTON,  
OHIO.

Via Ches. & Ohio Ry.  
B. & O. R. R.  
P. & R. Ry.  
C. R. R. of N. J.

Ches. & Ohio Ry.  
Penna. R. R.

## BUFFALO, N. Y.

West Shore R. R.  
N. Y. C. & H. R. R. R.  
Erie R. R.  
D., L. & W. R. R.  
Lehigh Valley R. R.  
R. W. & O. R. R.  
N. Y., O. & W. Rwy.

## CHATTANOOGA, TENN.

Southern Rwy.  
Penna. R. R.

Southern Rwy.  
N. & W. Rwy.  
Penna. R. R.

Southern Rwy.  
O. D. S. S. Co.

## KNOXVILLE, TENN.

Southern Rwy.  
Penna. R. R.

Southern Rwy.  
N. & W. Rwy.  
Penna. R. R.

Southern Rwy.  
O. D. S. S. Co.

## OSWEGO, N. Y.

D., L. & W. R. R.  
N. Y. C. & H. R. R. R.  
N. Y., O. & W. Rwy.

## NASHVILLE, TENN.

L. & N. R. R.  
Penna. R. R.

N. C. & St. L. Ry.  
Southern Ry.  
Penna. R. R.

N. C. & St. L. Ry.  
S. A. Line R. R.  
R., F. & P. R. R.  
Penna. R. R.

N. C. & St. L. Ry.  
Georgia R. R.  
Atlantic Coast Line.  
R., F. & P. R. R.  
Penna. R. R.

## ASHEVILLE, N. C.

Southern Ry.  
Penna. R. R.

Southern Ry.  
N. Y., P. & N. R. R.  
Penna. R. R.

Southern Ry.  
O. D. S. S. Co.

## WILMINGTON, N. C.

A. C. Line.  
Penna. R. R.

A. C. Line.  
N. Y., P. & N. R. R.  
Penna. R. R.

S. A. Line.  
Penna. R. R.

A. C. Line.  
O. D. S. S. Co.

S. A. Line.  
O. D. S. S. Co.

S. A. Line.  
N. Y., P. & N. R. R.  
Penna. R. R.

## ELIZABETHTON, TENN.

East Tenn. & W. N. C. R. R.	E. T. & W. N. C. R. R.	E. T. & W. N. C. R. R.
N. & W. Ry.	N. & W. Ry.	N. & W. Ry.
Cum. Valley R. R.	W. Md. R. R.	B. & O. R. R.
Penna. R. R.	P. & R. Ry.	P. & R. Ry.
	C. R. R. of N. J., or L. V.	C. R. R. of N. J.
	R. R.	

## GRAFTON, W. VA.

B. & O. R. R.  
P. & R. Ry.  
C. R. R. of N. J.

## MURPHY, N. C.

Southern Ry.	Southern Ry.	Southern Ry.
Penna. R. R.	N. Y. P. & N. R. R.	O. D. S. S. Co.
	Penna. R. R.	

## NORTON, W. VA.

N. & W. Ry.	N. & W. Ry.	N. & W. Ry.
Cumb. V. R. R.	W. Md. R. R.	W. Md. R. R.
Penna. R. R.	P. & R. Ry.	P. & R. Ry.
	L. Valley R. R.	C. R. R. of N. J.
N. & W. Ry.	N. & W. Ry.	N. & W. Ry.
B. & O. R. R.	O. D. S. S. Co.	Southern Ry.
P. & R. Ry.		Penna. R. R.
C. R. R. of N. J.		

## CAMDEN ON GAULEY, W. VA.

B. & O. R. R.  
P. & R. Ry.  
C. R. R. of N. J.

## ELIZABETH CITY, N. C.

Nor. & So. Ry.	Norfolk & So. Ry.
N. Y. P. & N. Ry.	O. D. S. S. Co.
Penna. R. R.	

## ELKINS, W. VA.

W. Va. Cent. & Pgh. Ry.	W. Va. Cent. & Pgh. R. R.
B. & O. R. R.	Penna. R. R.
P. & R. Ry.	
C. R. R. of N. J.	

Senator TILLMAN. Mr. Chairman, my understanding has been that the long and short haul clause had reference to shipments by a given road, not over any general railroad system of the country.

The CHAIRMAN. That was my understanding of it.

Senator TILLMAN. I should think that the information which you are seeking to get, and which we all want, would be fuller if points without competitive water rates were named. For instance, Menominee is on the river leading into Lake Michigan.

Mr. HIGBIE. It is right at the mouth of that river.

Senator TILLMAN. So there is really entire water transportation if you choose to bring it through the lakes, down the Erie Canal, and into the Hudson to New York City. Do you not suppose that that accounts for the extremely low rate?

Mr. HIGBIE. It is more than probable.

Senator TILLMAN. Still there must be other points connected with New York by all-rail routes that have no advantage of that kind.

Mr. HIGBIE. Yes; there is Memphis, Tenn.

Senator TILLMAN. That also has an entire water route down the

Mississippi and by the Gulf and Atlantic to New York, but this route is not used at all. Take some point that has no water connection with New York.

Mr. HIGBIE. Indianapolis, Ind.

Senator TILLMAN. Indianapolis and Elizabethton, I should suppose, are practically the same distance from New York.

Mr. HIGBIE. Indianapolis is a trifle farther; it is 818 miles from New York, and Elizabethton is 628 miles from New York. But Elizabethton, which has the shorter distance, has to pay a greater rate.

Senator TILLMAN. Such information is valuable.

Mr. HIGBIE. I thank you for calling my attention to it, Senator.

The CHAIRMAN. I know that Menominee has a water route, but I would like Mr. Higbie to show what roads his land freights would travel over. An additional column can be made to show that.

Mr. HIGBIE. Oh, yes; it will take only very little trouble. In reply to what the Senator has said about the long and short haul clause, I will say that I know it to be the fact that this movement of freight over the Norfolk and Western road from Cincinnati has to pass these same points in going to New York, and which points are compelled to pay a much higher rate than what is known as the Cincinnati rate.

Senator TILLMAN. That would come under the interpretation, as we understand, of the long and short haul clause. My understanding of that clause of the original act is that no given railroad should charge a greater rate to a place 300 miles from a competitive point than to a place 500 miles from such a point.

The CHAIRMAN. The statute states further that the freight must move in the same direction over the same road. Mr. Higbie, if you will add that column to your table, as suggested by me, it will be very valuable to us.

Mr. HIGBIE. I shall be glad to do so, and will mail it to you as soon as I can get it prepared.

Another thing that has changed the conditions since the time when the present act was passed, is competition among the railroads themselves. At that time there was great competition, and that, in many cases, regulated the rates charged and the rates made. But in the change of the method of doing business different systems have been consolidated into one system, and they have entered into what we call a community of interest plan, gentlemen, "agreements and other such arrangements."

Senator TILLMAN. What is understood by the general term pooling.

Mr. HIGBIE. Yes.

The CHAIRMAN. It has gone further, it is absolute ownership.

Senator TILLMAN. Of course; but it is said that they have also combined where ownership does not exist.

The CHAIRMAN. They can not combine now.

Senator TILLMAN. You mean they can not lawfully combine; but still some of us feel pretty thoroughly satisfied that they have combined and are now combining.

The CHAIRMAN. By actual purchase, but not in violation of the Sherman antitrust law. If so, they ought to be prosecuted. Now, Mr. Higbie, I will ask you this question: Have you observed in the last two years, since these consolidations have gone into effect, that the rates are perceptibly higher than they were before?

Mr. HIGBIE. It has not been my experience in the lumber business—I know of no case where the lumber business has been affected in that



way. I understand that some other kinds of business have been very largely affected by these consolidations, more particularly in the matter of classifications.

The CHAIRMAN. Then I understand you to say that within the last two years, or since these consolidations, the rates on lumber have not perceptibly advanced?

Mr. HIGBIE. They have not.

It seems to me, Mr. Chairman, that the railroads in setting forth their side of the case in the public prints and otherwise, have rather sought to create the impression that the Interstate Commerce Commission was intended more particularly to represent the shippers, and not the railroads. My understanding is that the Interstate Commerce Commission was created for the express purpose of representing both sides of the question, so that when complaint is made, or when objection is made to an order of the Commission, each side shall have an equal chance to prove its side of the case before the Commission, just as they would in a court of law. The impression has been abroad that in case these additional powers are conferred upon the Commission the Commission will be dangerous, and many other adjectives are used which I will not specify. I can not understand that. They lose sight of the fact that somebody has to make these railroad rates. While we do not intend to ask that the Interstate Commerce Commission should be given the power to take initial action to make a rate—that being left entirely to the railroads, as it always has been—we do feel that in view of the discriminations and secret rate cutting and unreasonable rates that some of the railroads have been charging, the power to regulate and to determine what is reasonable rate should be given to the Commission, and then it should have the power of seeing that that reasonable rate is put into effect.

I think, gentlemen, I will not take any more of your time.

Senator TILLMAN. Before the gentleman closes, I should like to ask him, if he is willing, or is authorized, to give us a list of the membership of his association?

Mr. HIGBIE. I will also mail that with the other statement.

Senator TILLMAN. As I have said, we want to have as much light as possible upon the character, respectability, and wealth of the business interests involved in those who come here appealing for legislation.

Mr. HIGBIE. I will be very glad, indeed, to mail that.

Senator FOSTER. Is it your opinion that the decision of the Commission as to rates should go into operation and effect immediately, or should it be open to appeal to the courts before it becomes effective?

Mr. HIGBIE. In reply to that question, Senator, it seems to me that the rate should go into effect within a reasonable time, say twenty or thirty days. I think the Nelson bill provides that. The trouble has been heretofore that when the decision of the Interstate Commerce Commission has been rendered, the matter has been allowed to take its course through the United States courts, thus consuming much time, until final determination has been had in the Supreme Court.

Senator FOSTER. An instance of the law's delays.

Mr. HIGBIE. Yes.

Senator TILLMAN. It tends to prevent appeal to the courts.

Mr. HIGBIE. And not only that, but it also tends to prevent lodgment of complaint with the Commission in the first instance. The expense of preparing the complaint and the conditions of delay are such that in a great many cases no action is taken at all.

## STATEMENT OF DAVID BINGHAM.

The CHAIRMAN. Please state whom you represent.

Mr. BINGHAM. I am chairman of the board of discrimination of the New York Produce Exchange. We have a membership of between 2,900 and 3,000. We are an incorporated body, and I think we are the largest exchange in the United States or perhaps in the world. The president of the exchange is here to give countenance to what I say; I am to do the talking. I suppose our business in extent comes next to the Chicago Exchange, which I think does a little more business than we do.

We are very anxious to have some legislation which will give to somebody the power to decide questions. It took us nearly ten years to get the first Interstate Commerce Commission appointed. For ten years after that we thought we had something that would give us relief from the discriminations of the railroads, only to find out, when it came to the test, that it was a delusion and a snare, and, so far as the business interests of the country are concerned that we represent, we do not think it is of any particular use. We want particularly to have a body that will give us a decision, and a decision before we die.

Our business is prompt. If we are shipping grain from Chicago to New York, of what earthly use is it to us to get a decision at the end of twelve months that the railroad companies were charging too much? We want a decision at once, even if it be against us. If we are to be hung, we want to know it right away. That is the reason why we are very much more favorably impressed with the Corliss bill than we are with the Elkins bill, as regards that particular point.

The CHAIRMAN. You want the order of the Commission made operative at once?

Mr. BINGHAM. Yes. It looks to us, Mr. Chairman and gentlemen, as if the Interstate Commerce Commission ought to occupy very much the position of the jury while the legal fraternity could retain the position of judge. We are perfectly willing to have the questions of law go to the judges, but when it comes to questions of fact, then we want them to go to the jury, to men who are familiar with the facts.

The New York Produce Exchange has an agreement with the trunk lines for arbitration which works very satisfactorily. We get along with our disputes with that association fairly well. The president of the exchange appoints one arbitrator and the trunk line appoints one; and they two appoint a third, and those three settle any question given to them not involving a large amount.

We are not here complaining particularly of the railroads, so far as New York is concerned. We are here to urge that we may have somebody whose decisions shall carry weight. It seems ridiculous to us that such a great body of men as the Interstate Commerce Commission should be created and given no power at all. The idea among the railroad people of the West when this Commission was created was that it had power to settle questions. Now we find that we want you gentlemen to give them power. We are not very particular about that power, except that we want to have it promptly applied. New York stands a little differently in that respect, I presume, from almost everybody here.

The produce exchange is not opposed to railroads making proper combinations. We would rather do our business with a combination

of railroads than with this road, that road, and the other. When we get a number of gentlemen together we can agree upon some tribunal to which we may refer our differences, and in that way we can keep transportation matters in good shape.

The CHAIRMAN. In other words, you think there may be pooling by way of agreements between railroads, subject to the supervision of the Commission?

Mr. BINGHAM. I wish you would change that word "pooling," Mr. President. We think there ought to be an agreement. We do not believe in pooling.

The CHAIRMAN. Well, call it an agreement.

Senator TILLMAN. Why should we beat the devil around the bush in that way? If there is an effective agreement, that is pooling.

Mr. BINGHAM. You have stated it. But a pooling arrangement may be made which will allow one road to be idle. Your grain may be shipped under a pooling arrangement over the Canadian Pacific when you do not want it to go over that road at all. What we want is to have the right of selecting the railroad to carry our grain. Let the best road have the most freight. We have no objection to these roads getting together and making agreements, such as they have in regard to passenger rates. For example, we go from New York to Chicago over the Delaware, Lackawanna and Western and we pay \$18. We travel over the New York Central and we pay \$20. Let the roads make the same sort of an arrangement in regard to freight, always provided that this arrangement is safeguarded by a competent body. We believe that the Interstate Commerce Commission is a competent body.

Senator TILLMAN. You are not, then, in favor of pooling, as it is usually understood?

Mr. BINGHAM. No, sir.

Senator TILLMAN. You do not believe it is for the best interests of the country?

Mr. BINGHAM. I do not.

Senator TILLMAN. But you do believe that it would be permissible for the roads to agree to give a rate of freight on each line from a given point?

Mr. BINGHAM. Yes, sir.

Senator TILLMAN. What is the use of any agreement at all? Why not let the Commission determine the rate over any given line, provided it shall be reasonably remunerative? It is not proposed anywhere, I believe, to confiscate property by compelling a railroad to haul at a loss. If one line, by reason of its heavy grades or other conditions, can not haul as cheaply as the New York Central can haul along the almost absolute level of the Hudson River from Albany down, where it can haul a hundred cars with one engine, why not give the Interstate Commerce Commission the power to fix rates on each line according to the conditions of that line, instead of letting the lines themselves fix them?

Mr. BINGHAM. Well, Mr. Senator, we believe we are doing that. The lines in the first instance settle the rate, but that rate does not go into effect until the Commission passes upon it. If it is not satisfactory, they throw it back, so you have got to make these rates subject to the approval of the Commission.

Senator FOSTER. Your idea, then, is that this agreement shall be subject to the approval of the Commission?

Mr. BINGHAM. That is my idea. In point of fact, if you care for it, I am willing to read what we would be willing to accept.

Senator TILLMAN. Let it go in your testimony.

The CHAIRMAN. Let it go in as part of your testimony.

Mr. BINGHAM. Very well.

Carriers subject to the provisions of this act, with respect to traffic subject to the act, may form associations to secure the establishment and maintenance of just, reasonable, nonpreferential, uniform, and stable rates, and for the promulgation and enforcement of reasonable and just rules and regulations as to the interchange of interstate traffic and the conduct of interstate business upon the following conditions:

(a) Articles of agreement shall be subscribed by the parties thereto stating, among other things, that they are entered into subject to the provisions of this section; the terms upon which new parties may come in; how the decisions of the association are to be made and enforced, and the length of time for which the association shall continue, which shall not be more than ten years. Such articles, when subscribed and in effect agreeably to the provisions of this section, shall be legally binding upon the parties thereto and be legally enforceable between them.

(b) The articles of association shall be filed with the Commission at least twenty days before they take effect. If the Commission, upon inspection of the same, is of the opinion that their operation would result in unreasonable rates, unjust discriminations, insufficient service to the public, or would in any manner contravene the provisions of this act, it shall enter an order disapproving the same. In connection with such order the Commission shall file a statement of its reasons for its disapproval. Said order shall be final and conclusive.

(c) If the Commission, upon inquiry into the actual operation of the association after the same has gone into effect, is of the opinion that it results in unreasonable rates, unjust discriminations, inadequate service, or is in any respect in contravention of this act it may enter an order requiring the same to be terminated on a date named, which shall not be less than ten days from the making of the order. Such order shall be final, and the effect of it shall be to render such articles of agreement null and void from and after date named, except as to claims between the parties arising prior to that date.

(d) The Commission shall have the right to examine, by its duly authorized agents, the files and proceedings of such association, including all contracts, records, documents, and other papers; and it may require said association to file with it, from time to time, copies of decisions promulgated by it or of other papers received or issued.

All orders issued by associations thus formed that in anywise affect rates shall be filed with the Commission, as provided in the original act in relation to the filing of tariffs.

Every agreement for the establishment and maintenance of rates or for the formation of such associations as are authorized by this section is prohibited, except as hereby authorized, and every carrier or representative of a carrier acting as a member of such an association or committee, whether the same exists by virtue of a definite agreement or not, is made subject to a penalty of \$5,000 for each day he so acts or continues a member thereof, which penalty shall be enforced in the manner provided for the enforcement of those penalties imposed by the tenth section of said act.

Senator TILLMAN. Are you willing to give the names of your membership?

Mr. BINGHAM. That is a big book, containing some 23,000 names; but we will give it to the committee.

Senator TILLMAN. I have been twitted time and again in conversations with the fact that nobody reads these statements; that people are satisfied with present conditions; that nobody wants legislation; that nobody appears here but interested parties, and that they get their inspiration from the Interstate Commission itself, which is clamoring for more power; that it has sent out circulars and solicitations to this man and to that association begging them to come here in the interest of that Commission.

Mr. BINGHAM. Here is a man interested in cotton. That comes in his line.

## STATEMENT OF SAMUEL T. HUBBARD.

The CHAIRMAN. Whom do you represent?

Mr. HUBBARD. I am president of the Cotton Exchange of New York. I am authorized by that body to appear and advocate the passage of the Corliss bill. We simply ask that more power be given to the Interstate Commerce Commission; that the orders which they issue may be carried into effect.

There is no need of detaining the committee with any extended remarks. That is the position we feel should be taken in regard to the Interstate Commerce Commission. I shall not detain the committee any longer, unless they desire to interrogate me.

Senator TILLMAN. Is your association in favor of pooling?

Mr. HUBBARD. I do not think we are. The question has not been discussed before it.

The CHAIRMAN. Were you authorized to make any statement in regard to that?

Mr. HUBBARD. No, sir.

Senator TILLMAN. Will you give us your individual opinion in regard to pooling?

Mr. HUBBARD. I do not think pooling would be for the best interests of the country. One road might be eliminated from operation by the payment to it of a certain sum of money, and freight would be lost to it which would otherwise come to it. This would tend to destroy the industries along that road. For instance, you might ship a thousand car loads over the New York Central which would more properly go over the Lehigh Valley; but instead of sending it by the Lehigh Valley road, that road is given \$10,000 in cash.

The CHAIRMAN. You think the Interstate Commerce Commission would not agree to anything like that?

Mr. HUBBARD. That is the question of pooling.

The CHAIRMAN. But if you had pooling under the absolute supervision of the Commission, with full power to set aside any pooling contract in whole or in part, what would you say?

Mr. HUBBARD. That is a question which I have not considered, Mr. Chairman.

Senator TILLMAN. You would not be willing to commit yourself personally, and you are not authorized to commit your association to an indorsement of pooling?

Mr. HUBBARD. No, sir; I am not.

## STATEMENT OF R. S. LYON.

The CHAIRMAN. Please give us your residence and your official position.

Mr. LYON. I reside in the city of Chicago. I am a layman now; I have heretofore been president of the Chicago Board of Trade; I was in 1899. I am a member of the transportation committee of that board now.

The CHAIRMAN. And authorized to appear here?

Mr. LYON. My credentials are here.

The CHAIRMAN. That is sufficient. You appear here on behalf of your board of trade?

Mr. LYON. Yes, sir.

The CHAIRMAN. Please make your statement.

Mr. LYON. It would seem possibly a little superfluous to one at this day to appear before a committee of Congress and show that the interstate-commerce law had been violated, or to bring any evidence to that end. You have had abundant evidence and are surfeited no doubt with facts showing this to be the case; consequently I will not attempt to take up any of your valuable time to that end. Representing, as I have the honor at this time, the great grain and shipping trade of the board of trade of the city of Chicago, I come before you to urge some change in the interstate-commerce law that will give to us equal, stable, and uniform rates to and from all points.

The Chicago Board of Trade, handling as it does the greatest bulk of grain of any market in the world, reaching out in all directions, west, northwest, and southwest, to bring this grain to the market, and in turn supplying the markets of the world, both domestic and foreign, must of necessity be the barometer of prices. So that any deviation from tariff rates, known always, whether made in the country west, tributary to Chicago, whereby grain is diverted from its natural channel, or even by our own members, competitors with one another, is immediately felt, and the market price of commodities dealt in on the Chicago market is influenced to a greater or less degree.

Transportation is necessary to the people. It is as absolutely a necessity to the prosperity of our nation as the air we breathe. Every one should be treated alike, whether a large shipper supplying the wants of foreign countries or a small shipper taking care of the needs of this country. All sorts of devices known to shippers and railroads should be open, and the great transportation lines of this country should treat each and every one alike. To use the language of one of our learned judges, "Freight rates should be as stable as postage rates, to everywhere and from everywhere alike." This is all we ask, and for such a law properly carried out we are willing to stand, to survive or fall.

I am a member of a grain firm and have been for the past twenty-four years. Formerly we belonged to that coterie of grain shippers designated as "small shippers." Previous to and about 1890 we sought to supply the wants of grain men in New England, New York, Pennsylvania, and Ohio, and throughout the Southern States, doing nothing but a domestic trade, and did exclusively a shipping business. We were, in fact, distributors of grain and its products from the West to that class of smaller merchants and mills throughout the above territory, who in their turn filled the wants of the farmers for these commodities; generally merchants who purchased in small quantities, single car lots, whose capital often prevented their carrying large lines, or who did not have extensive storehouses to care for the same. Nor did they seek to use the cars of the various railroads to store their grain in. As fast as their single car lots were disposed of they were in the market for further supplies.

We did strictly a domestic shipping business, and were not of that class of grain dealers who sought an export trade, shipping in large quantities by water and rail to the seaboard and solely to supply the wants of the export trade. I speak of our own firm merely as an example, but our own experience is that of many. Gradually this trade became smaller by reason of the encroachment of larger shippers, more favored by rates; and we were at last driven almost entirely out of the shipping business and obliged to take up other branches of the grain business. There are combinations of Western elevator compa-

nies with railway managers on different lines of roads, and all more or less competitors. Each railway wants the business. They are secret and powerful combinations, with mutual desires for securing traffic. The rates and devices known only to railroad men are mere playthings.

The act to regulate commerce was passed solely to secure an equitable distribution of the benefits of transportation and to correct abuses which had imperceptibly and gradually crept into the administration of the vast powers conferred upon railroad corporations, not for the corporations alone, but for the people in the prosecution of their business enterprises. This Interstate Commerce Commission was not framed to impair business interests, but to conserve and protect. In the words of the Interstate Commerce Commission, "It had for its object to regulate a vast business to the requirements of justice, and was not passed for a day or a year; it had permanent benefits in view, and to accomplish these with the least possible disturbance to the immense interests involved." But, as the years since the enactment of the law have gone on and law itself tried, it seems to-day as if the Commission (without reflecting in any manner upon the character and ability of its members) has signally failed in the exercise of controlling power; its mandates have either been supinely forced or altogether evaded. The great complaint against the law and the Commission to-day is that it is a creation powerless to enforce its decrees.

I am of the opinion that the bill now before the committee, and known as Senate bill No. 3575, will meet the requirements and give to the interstate-commerce law greater effectiveness. I believe the interstate-commerce law should be so amended as a whole that under the light of experience and decisions of the courts of the United States the rights and interests of the people in general should be properly safeguarded under it, and defined by it, and the responsibility of carriers carefully fixed and defined in it, and the power and scope of the Interstate Commerce Commission, including the right to fix rates and enforce their decisions, properly established by it.

I am not wise enough nor am I lawyer enough to go into the details of this bill. Its common sense appeals to me, and I leave it to others, and no doubt you have heard them, to argue out the amendments proposed in the bill now before you. My own experience in freight matters makes me believe that such portions of the bill now before you as relate to the imprisonment clause in the original law should be dropped and that fines against corporations violating the law be imposed. Railroad officials and agents hold social positions among themselves and in the community; different shippers are personal friends of one another; to complain one of the other, and send them to imprisonment for violating a law which we know emanates from corporations themselves, goes against our best feeling. But if a fine could be imposed on corporations, who are in reality above agents and general managers, and in fact the real offenders, our courts would now be full of violators of the law.

The temper, if not the spirit of railway managers, toward the successful administration of the interstate-commerce law has become more hurtful to the railways than to the public. But these corporations are in no sense exempt from public opinion because of the nearly universal, if not organized, opposition to laws enacted for the purpose of regulating their relations with the people. It is not too much to assume that the people hold these laws in higher and higher esteem to

the ratio of contempt for them and the constant violation of their terms by the railways. This conflict between the railways and the interstate-commerce enactment has well-nigh exhausted the patience of the people and those who are appointed to execute its provisions. That the law itself has demonstrated that it needs some changes to make it more applicable to present needs, none will deny. The public demands at the hands of Congress some radical improvements. What we need in reference to the Interstate Commerce Commission is that its powers shall be more definitely specified; that it shall have greater powers to enforce its orders. We need an interstate-commerce law, and that the powers of its commission be defined. I believe that there is but one way to maintain reasonable, fair, and just rates, and that is by giving the railways the right to establish a rate, and then go to the Commission and have that rate indorsed, publish the rate, and live up to it. In a word, be honest. Heretofore Congress has seemed slow and apparently indifferent, but we believe needed changes in the law will be obtained and justice be done to all.

Senator TILLMAN. Will you please tell us what your association thinks of pooling?

Mr. LYON. I can not tell you. I do not believe our association has put itself on record one way or the other as an association. Our directors have from time to time opposed it, and they are the controlling power.

Senator TILLMAN. What is your individual opinion?

Mr. LYON. My own opinion is decidedly against it—always has been and always will be—because it smothers competition.

Senator TILLMAN. Will you leave with us a list of the membership of your association?

Mr. LYON. We have a book that should be on file in Congress, certainly, in the form of our board of trade reports from 1870. Those are now on file in the library. We send them every year.

Senator TILLMAN. You know what I want, from what I said to the other gentlemen.

Mr. LYON. We will send them, and will be glad to do so.

Senator TILLMAN. I want some testimony as to the character and respectability of the men who are asking relief.

Mr. LYON. Many members of the New York Produce Exchange are members of our board of trade, and many of the members of our board of trade are members of the New York Board of Trade. We also have members in Europe, and one, I believe, in Australia.

Senator FOSTER. Do you believe that the railroads should establish a rate, submit that to the Commission, and then that the Commission should either ratify or reject it?

Mr. LYON. I think the Commission should have power to say whether a rate is reasonable or not, and then should also have the power to compel the railroads to live up to it.

Senator TILLMAN. You mean that after they have established it they should not change it without the permission of the Interstate Commerce Commission?

Mr. LYON. Yes, sir.

Senator TILLMAN. And have no secret rebates?

Mr. LYON. No, sir; not at all.

Senator FOSTER. Suppose the Commission should establish unjust rates?



Mr. LYON. The Nelson bill provides for that. We indorse the Nelson bill, that the rates be in force for two years.

Senator TILLMAN. You mean that the Commission should be given the power to fix what it decides to be just rates, with right of appeal?

Mr. LYON. With right of appeal to the courts. Let that power be enforced.

Senator TILLMAN. While litigation is going on?

Mr. LYON. Yes, sir.

## STATEMENT OF CHARLES N. CHADWICK.

WASHINGTON, D. C., *April 16, 1902.*

*The Honorable Committee on Interstate Commerce, United States Senate.*

GENTLEMEN: At a meeting of the Manufacturers' Association of New York, on the 17th day of February, 1902, the following resolution was unanimously adopted:

*Resolved*, That this Association favors the enactment of H. R. bill No. 8337, and urges upon our representatives in Congress to use their best endeavors to secure passage of said bill. The undersigned was appointed a delegate to appear at Washington as a representative of the association to advocate the enactment of the above measure and for the following reasons:

First, under the interstate-commerce act, as it now exists, orders of the Commission can only be made effective by judgment of the courts. The pending amendment provides for a remedy to give effect to the orders of the Commission while securing to the defendants the right of appeal. This appears to us to be eminently just and fair.

Second. These amendments do not confer upon the Commission any general rate-making power. This power is still left with the common carriers. It seeks to give the Commission power to correct rates which have been shown by judicial investigation to be unreasonable, unlawful, and discriminative, and the orders of the Commission to be obligatory only for a period of two years. Inasmuch as common carriers are recipients of favored legislation, it is but right they should be subjected to governmental control. Under the circumstances it is not a dangerous precedent, and if wrong be done remedy lies with the courts. It reverses present conditions and makes the railroads the defendants rather than the public. Because of the varying conditions, the implied contract between the public and the common carrier must be, to a great extent, a matter of continuous interpretation. Common sense and fair dealing would seem to point to some authority with full power to enforce the needed remedy.

Third. To leave the jurisdiction of conflicting interests to the courts provides only a remedy and compensation for the particular question under consideration. The condition still remains unchanged unless power lodges with some body to rule effectively upon the question and make the needed change, which shall be continuous.

Fourth. The added powers and penalties provided for in these amendments seem to meet the situation and make the interstate-commerce act a mandatory rather than an advisory measure. As an advisory measure it is an absurdity, because it can compel no action. As a mandatory measure it places control over the common carrier, where it belongs, with the Government as a representative of the people, and insures, so far as human limitations admit, substantial justice to all.

For these and other reasons, would respectfully urge that these amendments be enacted into law. I have the honor to be,

Respectfully, yours,

CHARLES N. CHADWICK,

*Delegate of the Manufacturers' Association of New York.*

The committee adjourned to 10 a. m. to-morrow.

FRIDAY, *April 18, 1902.*

At the sitting of the committee on Friday, April 18, 1902, the following-named gentlemen appeared: William H. Chadwick, representing the Chicago Board of Trade; T. W. Tomlinson, representing the Chicago Live Stock Exchange; J. B. Daish, representing the National Hay Association; F. B. Thurber, representing the United States Export Association; and John D. Kernan, counsel for the New York Produce Exchange.

### STATEMENT OF WILLIAM H. CHADWICK.

The CHAIRMAN. Please state whom you represent.

Mr. CHADWICK. I will read my credentials first; and in fact I will read the whole of what I shall say, with the permission of the committee. I think that is the better way. I will now read my credentials, so that you can see the charter I have.

BOARD OF TRADE OF THE CITY OF CHICAGO,  
*Chicago, April 9, 1902.*

Mr. WILLIAM H. CHADWICK,  
*Chairman Transportation Committee.*

DEAR SIR: I have the honor to inform you that I have appointed you to represent the Board of Trade of the city of Chicago at hearings in Washington before the committees of the Senate and House upon the subject of granting additional powers to the Interstate Commerce Commission.

While the association has indorsed the Nelson-Corliss bill, and you are to use your endeavors toward the passage of that bill, you are granted discretion to agree to such compromise as may seem necessary in your judgment to secure the relief sought.

Respectfully,

WM. S. WARREN, *President.*

If the committee wish any information in regard to the Chicago Board of Trade, I shall be pleased to furnish it.

To draw our attention to conditions which formerly prevailed and which led to the enactment of the act to regulate commerce, I now quote, from the proceedings of the National Board of Trade in Washington, December 15, 1897, the statement of Hon. George F. Stone, secretary of the Board of Trade of the city of Chicago, as follows:

The proposition to establish pooling is not by any means new, and we are therefore not left in doubt as to its effects upon the business interests of the country. The first prominent pool was the Chicago-Omaha, and was formed in 1870, and was found in its operation immensely profitable to railroads, so that in the year 1887 practically all competitive traffic was pooled.

During those years business suffered, localities and shippers were discriminated against, secret rebates to a greater extent than before or since were granted. Discrimination in favor of industries in which some of the parties to the pool were financially interested placed other industries under great and sometimes fatal disadvantages.

One of the most mischievous and demoralizing pools that were established about this time was the Southwestern Railway Association, a vampire which for a decade sucked the life-blood of the commerce of the Missouri Valley. The Southwestern Railway Association solved the problem of how to get rid of competition and to rob the people within the letter of the law. Kansas City built a line to the South and thought she had a line that could be used to fight this pool. It had not been in operation a year before this association, with subsidies, had it bound hand and foot. Another outlet to the East, via Omaha and Council Bluffs, was also shut up, leaving the Missouri River country absolutely at the mercy of the pooling lines.

At every acquisition of competing lines, rates were moved up a notch, until they reached an appalling figure. When this association was organized, in 1876, the rate on first-class matter between Missouri River Valley and Chicago was 60 cents. It

was at once advanced several cents, and in 1880 had reached 75 cents on east bound and 85 cents on west bound. In a few months it was moved up to 90 cents. When the association was organized, it included the Burlington, Chicago and Alton, Missouri Pacific, Rock Island, and Wabash. The system was soon found incomplete, in that there were several loopholes by which the people were enabled to avoid the association's higher tariff.

One of these was the Missouri Pacific in Kansas. The business of ten points on the Gould system—Parsons, Chanute, Garnett, Ottawa, Humboldt, Fort Scott, Paola, Burlington, Emporia, and Junction City, since known as the ten junction points—was sent to St. Louis over Gould's southern line, avoiding the pool points. In order to divert this traffic through the pool, by which means alone the higher rates could be maintained, the association entered into an agreement to pay the Missouri Pacific a liberal percentage of the gross earnings of the pool, on condition that this business be sent via pool points. The amount paid the Missouri Pacific in 1885, on account of the ten junction points, was \$660,000, the agreed percentage of the receipts of the association, which amounted to \$11,000,000.

During several years of the existence of this pool the shippers of the Missouri Valley had occasionally taken advantage of the rates offered by the Milwaukee and St. Paul Railroad to ship via Omaha and Council Bluffs. The pool, in order to prevent this, found it necessary to bind the Missouri Pacific and Council Bluffs Railroad from making special rates to Omaha and Council Bluffs. Here again a money plaster was applied, the pool agreeing to pay the two lines a percentage of the gross earnings, amounting to \$75,000 a year; the lines on their part to charge the full local rates between the pool points and Omaha and Council Bluffs.

The object of this was to make the rate via the northern roads the same as that via the association or pool roads, in order to keep all the business in the pool, as shippers would not use the Milwaukee or Northwestern at the same rates, owing to the greater length of those lines. The Burlington and Missouri River coming into competition with the central branch of the Union Pacific (a pool line), the association, in order to maintain rates and have the business pooled, subsidized the competing line to the amount of \$250,000 a year; the same principle was applied to the St. Louis, Fort Scott and Wichita after its extension into southern Kansas. The Fort Scott and Wichita, in consideration of the maintenance of rates and pooling business of its lines, received of the association a percentage of the gross earnings of the pool amounting to \$225,000 a year. All the competitors who could be taken into the pools were thus brought in. The commissioner in the meantime turned his attention in other directions. Immediately upon the completion of the Kansas City, Springfield and Memphis, in 1883, the Fort Scott began to compete for the St. Louis business in conjunction with the St. Louis and San Francisco; by its connection with the latter at Springfield it was enabled to cut the association rate to St. Louis and still get a fair remuneration. In order to stop this, the association entered into an agreement with the Fort Scott and Frisco roads by which the latter were paid \$8,000 a month on condition that they keep out of the St. Louis business.

Such instances and similar combinations might be multiplied almost indefinitely, but sufficient is shown to indicate the nature of railway pools; they are inimical to the public interests; they are in restraint of trade; they prevent competition; they are monopolistic in purpose and effect; they are odious in law; they are subversive of the very interests which railways were created to conserve, viz, the general welfare, in so far as that welfare relates to the functions and obligations of a common carrier.

I have read this simply to take your minds back to the reason why there ever was created an interstate commerce commission, and why the law was ever framed to bring about that result, to get a body of men who could do the things that were apparently intended by the authors of the law to be done; but I have always thought that if able men had written that law with the contrary intent it could not have been found more fatally weak.

Year after year we plain people have been coming to committees of the Senate and the House seeking and asking relief from conditions which are a disgrace to the Republic and which never should have been tolerated in this country.

The people have long known and testified what the conditions have been, and their statements have had such full corroboration recently that their case is completely established beyond refutation.

I think that we may fairly assume, without argument or dispute, that discrimination, rate cutting, and rebate granting have been common and widespread practices for a number of years. These are the chief causes of complaint, and I have never heard them defended as just, fair, or right.

The complaint is that discrimination has been practiced for the benefit of some to the injury of others, and to the complete destruction of the business and substance of not a few.

The general public appears to be well represented in asking that the powers of the Interstate Commerce Commission be enlarged so that certain conditions which are represented as evils may be properly and justly regulated.

The end thereby sought appears to be that the common interstate carrier must perform every service, to all patrons, without any discrimination whatever—the same price to each for an identical service.

New conditions are now fast making, and with the control of vast systems vested in the hands of a few men, the problem is likely to become more complex through a return to the practices of the old pooling days.

The great danger threatened in this country is railroad monopoly, which will produce an extortionate rate.

Five syndicates, in each one of which some one man is the dominating spirit, control more than 100,000 miles of railroad. If you add to each one of these systems one of five lines which are still independent, and which will not aggregate over 25,000 miles, making 125,000 miles in all, you have railroad monopoly. There are 75,000 miles left, but those railroads are absolutely dependent on the others. The effect of this is already to be seen. Rates are advancing. The grain rate is an illustration. In 1890 the Commission held that 23 cents was a reasonable rate from the Mississippi River to New York; in the winter of 1892 the published rate was 29 cents; in the winter of 1899 the published rate was  $13\frac{1}{2}$  cents, and later 12 cents from the Mississippi River to New York. That was due to competition between carriers. That rate is to-day  $18\frac{1}{2}$  cents.

In other words, while it was a few days ago 12 cents per hundred, on Monday of the current week it was increased to  $18\frac{1}{2}$  cents, which is an increase of more than 50 per cent.

The higher rate has been made possible by the combinations of lines between Chicago and the seaboard. The Pennsylvania has acquired the Baltimore and Ohio, the Norfolk and Western, the Chesapeake and Ohio, and lines north of the Pennsylvania have come mainly under the control of the New York Central and Mr. Morgan.

A year ago the published rate on grain from Chicago to New York was reduced from 16 cents to  $13\frac{1}{2}$  cents. At the same time the railroads agreed to charge a secret rate of 11 cents. April 14, 1902, the published rate was advanced from 13 cents to 16 cents.

The CHAIRMAN. That is the rebate.

Mr. CHADWICK. Secret rebates, of course. I do not know that I ought to say that it is always in the way of rebate.

The CHAIRMAN. That is the effect of it?

Mr. CHADWICK. That is your deduction.

This rate they must expect to maintain, for certain of the most important lines are under injunction to maintain the published rate. Apparently it is the intention to maintain a rate 5 cents higher this season than last season between Chicago and the seaboard.

When five or six men can sit down in New York and determine what the grain rate shall be from Kansas City to the Atlantic seaboard, from the Mississippi River to the Atlantic seaboard, and from the grain fields to St. Louis, Chicago, and Duluth, there is really no longer any competition in the transportation of grain, and that condition is practically here.

Senator KEAN. Is not that exactly what you are asking to have done?

Mr. CHADWICK. I will come to that later, Mr. Kean. I think it is better to state definitely what we do ask than to make deductions, so far as individual statements go, if that is agreeable to you.

Mr. KEAN. Certainly.

Mr. CHADWICK. To return to this matter about the railroads:

	Miles.
The Vanderbilt system .....	20,000
Pennsylvania system .....	18,000
Gould system .....	16,000
Morgan-Hill (including Southern Railway, controlled by Mr. Morgan) ....	37,000
Harriman system .....	17,000
Total .....	108,000

In the Harriman system I leave out all reference, for good reasons, to the Illinois Central.

The five combinations which are now independent and which have to-day 108,000 miles under the control of five men are:

#### IMPORTANT INDEPENDENT SYSTEMS.

	Mileage.
Atchison, Topeka and Santa Fe .....	7,481
Chicago, Rock Island and Pacific .....	3,818
St. Louis and San Francisco .....	2,887
Colorado and Southern .....	1,142
Chicago, Milwaukee and St. Paul .....	6,461
Pere Marquette .....	1,747
Atlantic Coast Line .....	2,177
Seaboard Air Line .....	2,600
Plant System .....	2,207
New York, New Haven and Hartford .....	2,038
Boston and Maine .....	3,338
Total mileage .....	35,896
Illinois Central .....	5,000

#### VANDERBILT SYSTEM.

New York Central System (including the main line, the Beech Creek, the Fall Brook, the Mohawk and Malone, the New York and Harlem, the Rome, Watertown and Ogdensburg, the West Shore, and many others) ....	3,107
Lake Shore and Michigan Southern .....	2,084
Michigan Central (including the Canadian Southern) .....	1,635
New York, Chicago and St. Louis (Nickel Plate) (including the Pittsburg and Lake Erie) .....	523
Chicago and Northwestern (including the Chicago, St. Paul, Minneapolis and Omaha, and the Fremont, Elkhorn and Missouri Valley) .....	8,769
Cleveland, Cincinnati, Chicago and St. Louis (Big Four) .....	2,287
Boston and Albany .....	394
Lake Erie and Western .....	725
Total mileage .....	19,524

## PENNSYLVANIA SYSTEM.

Mileage.

Pennsylvania R. R. (east of Pittsburgh and Erie) (including the New Jersey lines, the Allegheny Valley R. R., the Philadelphia and Erie, the Northern Central, and many others) .....	5,530
Pennsylvania R. R. (west of Pittsburgh and Erie) (including the Pennsylvania Company, the Peoria and Western, the St. Louis, Vandalia and Terre Haute, the Pittsburgh, Chicago, Cincinnati, and St. Louis, the Cleveland, Akron and Columbus, the Grand Rapids and Indiana, and others) .....	4,405
Long Island .....	391
Baltimore and Ohio (including the Cleveland, Lorain and Wheeling, the Baltimore and Ohio Southwestern, and others) .....	4,025
Total .....	14,351

## GOULD SYSTEM.

Controlled by the Gould-Sage interests:	
Missouri Pacific and Iron Mountain .....	5,372
International and Great Northern .....	891
Wabash (including the Wheeling and Lake Erie and the Omaha and St. Louis) .....	2,968
St. Louis and Southwestern .....	1,293
Texas and Pacific .....	1,619
Rockefeller and Gould interests:	
Missouri, Kansas and Texas .....	2,480
Denver and Rio Grande (including the Rio Grande Western) .....	2,301
Total mileage .....	16,924

## MORGAN-HILL SYSTEM.

Controlled jointly:	
Northern Pacific (which owns 23,000,000 acres of land) .....	5,487
Great Northern .....	5,417
Chicago, Burlington and Quincy .....	8,171
Erie .....	2,605
Lehigh Valley .....	2,178
Controlled by Mr. Morgan:	
Philadelphia and Reading (including the Central of New Jersey) .....	1,677
Hocking Valley (including the Toledo and Ohio Central and the Kanawha and Michigan) .....	882
Chicago, Indianapolis and Louisville .....	546
Southern Railway (including the Central of Georgia, the Alabama Great Southern, the Cincinnati, New Orleans and Texas Pacific, and the Mobile and Ohio) .....	10,627
Total mileage .....	37,590

## HARRIMAN SYSTEM.

Union Pacific (including the Southern Pacific, the Oregon Railroad and Navigation Company, and the Oregon Short Line) .....	15,163
Chicago and Alton .....	918
Kansas City Southern .....	873
Total mileage .....	16,954

It is true, it is forceful, for a man to sit down and look at this matter dispassionately. A man not interested in railroads and being put in possession of these facts would throw up his hands in holy horror. I really do not believe that those who have not studied the question thoroughly can realize it at all.

While the powers of the judiciary should not be conferred on the Commission, it may safely be granted the right to arbitrate.

We consider another provision absolutely essential to reasonably

safeguard the interest of the public if this bill shall pass; namely, that as the Interstate Commerce Commission is composed of men who can have no personal interest in the matters brought before them under the provisions of this bill, the order of the Commission should stand, unless and until it be suspended or revoked by the circuit or other court or judge, as may be provided.

The powers of the Commission are now simply advisory.

For the first ten years the Commission exercised the power of revising rates, which proved quite satisfactory to the country.

The decisions of the Supreme Court about 1897 terminated that power. The consequences have been most serious during the succeeding five years. Of about 135 orders made by the Commission, I think that 68 of them dealt with unjust and unreasonable rates; and for the correction of such wrongs I have not been able to learn of a single instance where the remedy sought has been obtained.

If the Nelson bill is to become substantially the law, we earnestly hope and recommend that it be amended, so that any definite order made by the Commission, as provided in the bill as printed, shall be reviewable by but one particularly designated court of the United States, which shall have jurisdiction in all parts of the United States and Territories, or shall be reviewable by one particularly designated judge of some court of the United States, who shall have the same jurisdiction, for the reviewing and passing upon such orders, so that all causes which may be heard under the act may have the benefit of expert service of the highest order.

Is there any argument in that particular suggestion? Here is a board, the Interstate Commerce Commission; they and their agents are experts. A case is taken to them, they are expert in their judgment of the matter; that is, they apply to the case the results of all the researches and study they have given to former cases and decisions and to such new ones as are necessary, and they come to a decision based upon that expert investigation. The case is then thrown by appeal into the courts. It comes before good lawyers, true; before good judges, true; is argued by able attorneys, true. But it is to be considered by men who never before have had such a case before them and may never have another. They have to decide the case without previous experience in such cases. Whereas if the case were to be considered by experts all the way through, would not that be ideal? And when the ideal is obtainable why not have it?

The CHAIRMAN. Is it your idea that such cases should be taken before the courts of the District of Columbia, or some other court specially designated?

Mr. CHADWICK. They should go to some court somewhere. It might be a loafing court. It is for you to formulate these things. I think it is possibly one of the wisest suggestions that could possibly be made for your consideration, that if you are going to have these matters go ultimately to a court it should be a court that shall have, per se and de facto, expert knowledge. It must be so. It can not be otherwise than expert.

The railroads ask for protection against each other. Are they not willing that the public be granted similar protection against the railroads themselves? Why not?

My personal experience with railroad managers has led me to believe that individually they are the peers of any class in the Republic.

Evidence was recently made public showing the following state of affairs:

That Richardson of Chicago, operating grain elevators and doing a grain business on the Santa Fe system, and Hall & Robinson of Kansas City, operating in grain on the Missouri Pacific, partially in common territory, each received from their respective railroads a private, and to all intents and purposes a secret, rebate of 5 cents per hundred; and that the Santa Fe authorized and employed the Richardson concern to purchase the grain at certain stations, paying to them a stipulated commission of one-fourth of a cent per bushel for handling the grain for the account and risk of the Santa Fe, which thus departed apparently from its proper functions as a common carrier, and thereby instead of performing its duty as the servant of the public, became the competitor of those legitimately so trading, engrossing their business.

Why should they collectively take any different course than each would follow of his own volition individually?

I am not willing to concede that the tariff rates of freight on grain of late have been, or now are, too high, nor do I complain that the different railroads, even in this period of great commercial activity and admitted prosperity, are collecting more pay for their services than honestly may be defended as fair and reasonable; for surely profits may be had more easily and paid with better grace in prosperous than in pinching times.

A crying and annoying evil which works hardship in many cases, and seems to be indefensible, is the irregular, heterogeneous classification of freight; and in this day of organization and method it seems strange that it has not heretofore been regulated.

Whenever any bill is passed it should provide protection for the carrier and the public by making it a misdemeanor, punishable by an exemplary fine, for any person, acting either as principal or otherwise, to obtain transportation at less than tariff, by misrepresentation of classification, weight, character, or any other fraudulent means.

As stability of rates, when fair, is a great desideratum, the orders of the Interstate Commerce Commission should be continued in force and obeyed for two years from the time they become originally operative and observed.

Of course, you know the vexing delays that have occurred all along the line. You know that has been one of the reasons why no one tries to do anything now. How can a man with a small fortune bet it all as against a tremendous corporation loaded with millions and hundreds of millions?

The people are here again with a bill—those same people who have been here time and again—seeking relief from evils which are now undenied and undeniable. It may seem strange that they continue to come again and again, but as you well know, they have no other hope save in you—you who stand morally pledged to do the fair thing, the reasonable, the proper, the possible thing, the thing that is right for the whole community of interests—trade, producer, consumer, shipper, carrier.

Devices for evading the interstate-commerce law have been abundant in the past, and as fast as one is uncovered and corrected, wholly or in part, a new device has been found, and who can say when and where the end will be?



Probably you—each of you—know much more than I do about this question of the regulation of common carriers, and I do not doubt that you know that the abuses which exist ought to be abated, and that we ought to obtain from you at the earliest day possible a full measure of relief from discrimination.

I am not prepared to indorse any proposition to confer upon any commission whatever the power to primarily institute and make a “just and reasonable rate.”

It seems, however, that it is entirely proper and right that the Commission may examine into all the conditions surrounding, pertaining to, affecting, or affected by any rates or practices which may be established by carriers, and if after a full hearing the Commission finds grounds on which they consider an order justifiable, then, as arbitrators, the order of the Commission should stand until and unless revoked by the court of review, for the making of the rate or the practice by the railroads is necessarily in the first instance *ex parte* and should not stand unless confirmed by the arbitrator, the Commission.

Relief from the evils of discrimination of every kind and degree, relief from the evils of unreasonably high rates, and to secure the benefits of uniform rates are what we intend to seek through the Nelson bill.

This is our charter to-day, and we think that the bill will accomplish the end sought, but if it will not accomplish that, show us how to amend it, so that justice may be done the public and the railroads alike, and you will confer an inestimable boon on millions who are affected by the matters under discussion.

I have the honor to represent before you the most important commercial organization of the world—an organization comprised of business men, merchants in and about Chicago and in all parts of the country, and also in those countries which are in close commercial touch with the United States.

The vessel and the railroad interests are strongly represented in our membership, as well as all the important banks and kindred interests.

We are in close touch with all the agricultural interests of the continent, and may fairly claim to know and reflect the crying needs of the people, and this we intend to do, and believe we are now doing.

Year in and year out for more than—think of the time the country has suffered!—more than thirty years, for the Chicago-Omaha pool was formed in 1870, and was grinding on like the car of Juggernaut in full vigor thirty years ago. The public has carried this Old Man of the Sea on its shoulders through a generation. This is no dream, for the vast volume of evidence given before the committees of Congress, before the Commission, before the courts, is perhaps so small in proportion to the amount that would be forthcoming should every man tell what he knew about railroad discriminations, as to constitute but an insignificant per cent of the whole; and yet what a mass of testimony has been printed upon these subjects!

Our prayer is before you. You are the only people who can assist us in this stage of the proceedings. You are the people on whom rests the responsibility for withholding from the people their rights and from granting the railroads the privileges which they deserve to enjoy. Few, if any, will complain that the people have not done their duty fully.

Two bills have been introduced in this session to amend the "Act to regulate commerce," and they are quite dissimilar in scope and in character.

I have been in hopes that some action would be taken whereby the members of the Interstate Commerce Commission would not be left subject to the political fortunes of party, but that their tenure of office would be certain and assured and their income comport with their position.

Give us the best courts possible, give Congress a fair bill, and practically what the railroads honestly know they need and what the public has a right to demand—reasonable safeguards; and, I am convinced, a large part of the present opposition will disappear, and I see now no good reason why the different interests should not come together, and, fairly safeguarding every interest, unite upon a fair, reasonable bill, and this we respectfully and earnestly petition you to do, and lift the traffic of the country out of the slough of despond in which you now see it.

In support of this statement I ask permission to file with this committee a document or report of the Interstate Commerce Commission printed in 1901 and denominated "In the matter of rates, facilities and practices applied in the transportation, handling, and storage of grain and grain products carried from western points to Atlantic seaboard and other Eastern destinations."

Senator KEAN. That is that Chicago case, is it?

The CHAIRMAN. Do you wish this document to go into the record, or is it accessible?

Senator TILLMAN. Is it a Government document?

Mr. CHADWICK. Yes.

The CHAIRMAN. Then we do not want to print it.

Mr. CHADWICK. I am going to put it in here if you will permit.

The CHAIRMAN. If it is a Government document and accessible, we do not need to reprint it.

Mr. CHADWICK. You can refer to it, of course.

The CHAIRMAN. Is it to be filled with your testimony?

Mr. CHADWICK. Yes.

Senator TILLMAN. I suggest to Mr. Chadwick that he will better accomplish his purpose if he will designate in specific terms just what portion of the document he refers to, so that anyone, in the extreme pressure of work here, can get it at once.

Senator KEAN. It is page 279.

Senator TILLMAN. Mr. Chadwick has not said anything about page 279. I suggest to him to designate what portion of that document bears out the statement he made a few moments ago.

Mr. CHADWICK. You get this matter on page 279.

The CHAIRMAN. You say the matter you refer to appears on page 279 in the document mentioned, and let that go in your testimony.

Mr. CHADWICK. If you so instruct me.

The CHAIRMAN. I make that suggestion, thinking it will reach what Senator Tillman wants.

Mr. CHADWICK. I shall finish in a moment.

This seems to me one of the most flagrant of all the numerous instances of wrongdoing on the part of the railroad fraternity which recently has come to my attention.

It seems to me that if we do not promptly enact a law which will not only check but abate such practices by the common carriers, we may expect them to encroach more and more on the province of the legitimate merchant in all directions, which can not fail to lead to and produce most deplorable results.

What will happen if the railroads go on and engross the business of the lumbermen, the iron dealer, the miller, the merchant, and so on, as they, in the instance cited, have treated the grain men in the territory named? What can the answer be but anarchy?

Now, Senator Tillman, I am at your disposal.

Senator TILLMAN. What I wanted was to have you designate specifically, so that it would be of easy reference to any Senator who may send for the document if this matter should come up in the Senate for consideration. If you understood the immense pressure that is on even the laziest of us here to try to keep in touch with what is going on, you would understand the value of such specific statements and references to data that can be secured in a moment. It will not do to proceed upon the assumption that men will read it, for they will not. But I want you to specify in as condensed shape as possible just what portion of that document bears out the statement you have just made as to the Santa Fe going into the grain business and hiring agents to monopolize the grain trade on the line of its road.

The CHAIRMAN. How recently was that? What year?

Mr. CHADWICK. It was recent enough. It is hard to find, because these hearings are printed without any proper heading or reference.

Senator TILLMAN. I suggest that we allow the stenographer to put it in when Mr. Chadwick finds it.

Mr. CHADWICK. I will try to help you. It was notably the testimony of one Robinson, of the firm of Ball & Robinson, and of Paul Morton, vice-president of the Atchison, Topeka and Santa Fe.

The CHAIRMAN. What year was that?

Mr. CHADWICK. Perhaps it was last year.

The CHAIRMAN. It must have been last fall.

Mr. CHADWICK. I see the date here "Washington, January 9" for one of them.

The CHAIRMAN. Last year was when it happened, I think. May I suggest that you fix this with the stenographer to give this data as Senator Tillman suggests. Is that all you have to submit?

Mr. CHADWICK. Yes, unless I am asked questions.

The CHAIRMAN. Does any member of the committee desire to ask any questions?

Senator TILLMAN. I did not hear all of Mr. Chadwick's statement or evidence or argument. I would like to ask him whether he thinks that the business interests of the country could stand a pooling arrangement among railroads? He may have answered that question in his statement, but I want to know specifically. One of these bills provides for pooling, subject to ratification by the Interstate Commerce Commission. I want his opinion or that of those whom he represents as to that matter.

Mr. CHADWICK. I will say in reply to the question of the Senator that it is generally understood that railroad men are better able to understand all the elements involved in the law granting to the Commission the power to make rates; that railroad men are probably better experts to judge of what are proper rates, and therefore railroad men

feel as they say they do, and consequently seek a bill providing for pooling by the railroads. If we once admit that they are the best judges in this matter, it seems to me, if you heard the premise that the railroad people are so—

Senator TILLMAN. So expert and honest?

Mr. CHADWICK. No; but so free from suggestion of self-seeking that they are really and truly experts, experts who will do justice in any case that comes before them, then your question is answered.

On the other hand, while the people are complaining against railroad practices, the railroads themselves have their own troubles, and one special feature before this Congress is the production of a bill to protect the railroads against each other. This confession—for it seems to be such—should appeal to the honest man in whatever walk of life, and should influence him to urge speedy action for the solution of the problem.

As pooling was practiced in the past it seemed to make rates unduly high and onerous. One great desideratum with us is uniform rates. We seek to escape discrimination. That is the greatest evil, as we consider. The great desideratum is to have uniform and steady rates, rates that are not changed by mere whim, but when made shall be made on some proper basis, and not as in the old pooling times, when the railroads skinned each other.

Instead of having pooling based on net earnings, we think pooling should be based on other considerations, namely, that they should take into consideration the equipment and the opportunities of earning money. They should take into consideration whether the equipment has been allowed to deteriorate, because I take it if the spirit of emulation is removed—which, of course, is a good spirit, needing only to be properly safeguarded—we shall have a drop, and equipment and service will deteriorate. I never heard anyone suggest that it would not, if let alone.

Pooling, pure and simple, would be something, of course, that would be a disgrace to the country, and not up to the times. So, when you ask me that question, I would answer by asking you another, seeking to get light before I give an answer: Would not pooling tend to stifle competition and lead to deterioration in service and equipment? If the spirit of emulation be removed, will not the whole railroad service deteriorate in all these features and become inadequate to the needs of the country? Could not the individual lines evade their responsibilities?

Senator TILLMAN. Are you through with your question?

Mr. CHADWICK. No; I want to answer your question, Senator, honestly, if you want me to. You do not want to cut me off, do you?

Senator TILLMAN. Not at all.

Mr. CHADWICK. The Board of Trade of the city of Chicago represents a great number of people—has a tremendous clientele. Representing that great number of people, they are in favor of having relief. We pray for relief. We want relief. But we want all conditions safeguarded on both sides of this controversy—I take it that it is called a controversy. We want everything safeguarded fairly. If there is any person living who can formulate the terms under which pooling can be permitted I wish that person would give you the benefit of his suggestions. There is nothing wicked, per se, in pooling. The wickedness in any of these things is the result to the person who is outside of the control and also outside the benefits of the pool. The

railroads have heretofore had vast benefits from pools, but the people have suffered.

If there is such deterioration of service and equipment, can all be cared for under a pooling bill? What difference does it make? Everybody is served alike. It is the very thing we ask for. If we have good service under proper conditions the railroads will not become a laughing stock, but will be as they are now, a thing in which we take great pride.

It seems to me that the people have suffered so long that we can not do otherwise than to take the best we can get. But we ought to insist upon having the best obtainable. Therefore, Governor Tillman, I will say that in the matter of pooling I am on the fence. I do not care a fig if we do have pooling, provided it is surrounded with proper safeguards. My people do not care, and the people at large do not care. You did not hear the first of my statement.

Senator TILLMAN. No.

Mr. CHADWICK. I wish you had, because I showed the horrors of the pooling arrangements in the West and Southwest, and I think I gave a very fair statement in regard to it; don't you, Mr. Chairman?

The CHAIRMAN. Yes.

Senator TILLMAN. Now, can I ask a question?

Mr. CHADWICK. Certainly.

Senator TILLMAN. In asking your questions a moment ago you said your answers were given in some measure by interrogatories?

Mr. CHADWICK. I was merely endeavoring to attract your attention to the point.

Senator TILLMAN. Then, instead of making a direct statement, with your opinion, you merely asked some questions, from which you drew deductions. Those deductions, to my mind, seemed to show that you were in favor of pooling, provided it should be safe-guarded by impossible conditions. In other words, you do not regard it as possible, do you, that human nature will lose its selfishness or that unlimited power will ever restrain itself so as to protect the masses against monopoly? Did I understand you correctly?

Mr. CHADWICK. I certainly would not have the safe-guards against pooling tied with a rope of sand.

Senator TILLMAN. What I was after was to get your opinion, as a business man representing business men, as to the feasibility, the practicability, the desirability, of some compromise arrangement, if that be possible, that would give relief from the present unbearable conditions, and at the same time not jeopardize the great interests of transportation. I do not think any reasonable person wants to ruin the railroads or unduly to hamper them or destroy their profit-earning capacity. The real question, after all, is to give the business interests of the country proper transportation facilities, to guard against discriminations, and you want a uniform, steady, and just rate—the justice being the most essential of those three features of the rate. You do not want any secret rebate given to competitors who are getting advantages from the railroads. Those are the elements.

Mr. CHADWICK. Certainly.

Senator TILLMAN. Do you believe that human nature can stand the strain of being allowed a rope and not using it? In other words, if you give the railroads the power to pool, if you do not hold the club over their heads by some statutory provision, will they not abuse it?

Mr. CHADWICK. The real thought that is in my mind, Governor, and which has crystallized itself from all the conferences in which I have participated, is that another bill should be drawn and perhaps adopted as a substitute by the committee for both these bills. I am chairman of the transportation committee of the Chicago Board of Trade, and all these matters come under my administration. I go before our local body there, the board of railroad and warehouse commissioners, and I am pretty well versed in all these things pertaining to transportation, as well versed as many laymen; and I know that if a proper bill is drawn, and honestly drawn, that will do all it pretends to do—which the original bill did not, because it was deftly drawn, in my opinion—then that bill ought to be submitted to this committee.

Now, I say if an honest bill is drawn, by honest men, and submitted to a jury of their peers, and subjected to scrutiny on the floor of the Senate and of the House, and then if you will have another meeting of the committee while it is under your consideration, so that people can come here and criticize it and tell you where the loopholes are, it is my belief that you can get a bill which will better serve your purposes than these bills. But if you Senators try to deal with this question on the floor of the Senate with only such information as is brought before the committee without dispute, then the case is hopeless, and must be. I wish to say to you now that what I have said, if you will permit me, by way of a partial answer to the questions that have been asked me, is exemplified by the testimony of Mr. Counselman, of Chicago, a brainy millionaire broker, a broad man, who knows all about this subject, as printed in Senate Document 39, Fifty-fifth Congress, first session. Mr. Foraker presented the report to the Senate, and it was ordered to be printed April 15, 1897. He testifies here—

The CHAIRMAN. Give us a reference to the page, if you please.

Mr. CHADWICK. He testifies on page 25 as follows:

Senator CHANDLER. Do I understand Mr. Counselman, as a shipper of grain, to say that the reduction of rates from Chicago to New York made last fall, which Mr. Blanchard has described, was an injury to the people of the United States?

Mr. COUNSELMAN. I believe that the reduction made in the way it was, day by day, rapid as it was, was an injury to the people of the whole Western country. I do not know whether it was an injury to the consumer. He got some benefit from it.

Senator CHANDLER. But to the producer you think it was an injury?

Mr. COUNSELMAN. Yes, sir.

Senator CHANDLER. Please explain that a little more fully.

Mr. COUNSELMAN. As the rates went down the prices at the seaboard declined. We therefore had to make our buying price accordingly as the rate went down.

Senator CHANDLER. Did that reduction grow out of the manipulation of the market?

Mr. COUNSELMAN. No; but of the rates.

Senator CHANDLER. It did not necessarily or logically grow out of the reduction of rates?

Mr. COUNSELMAN. Necessarily, and, I think, logically.

Senator CHANDLER. Logically the reduction of freight rates from Chicago to New York is an injury to the farmer who produces the corn?

Mr. COUNSELMAN. In this way: We will say 25 cents is the market price, and that there is a reduction of 5 cents a hundred, if you choose. You reduce that rate 5 cents per hundred and he can reduce his price 2.80 per bushel, because you can get corn in Chicago and ship it to New York for 5 cents per 100 pounds less than he used to, or 2.80 per bushel less. "I am not going to pay 40 cents when I can get it for 2.80 less," he says. The rate from the West to Chicago is not changed in this trouble. It is the same. How is the Chicago shipper to protect himself unless he buys that grain just in proportion as the eastern rate is reduced?

Senator CHANDLER. It seems to me to be a paradox—I may be able to work it out—that the reduction of rates from Chicago to New York hurts the producer, the farmer.

Mr. COUNSELMAN. Just remember in your reflections on the subject, and it may not

appear so paradoxical, that the freight rate from the West to Chicago is undisturbed, and that the disturbance in this instance was from Chicago East. It cost just as much to get the grain to Chicago, but the rate was reduced from Chicago eastward. Therefore, way back West we look finally where we are going to land, as the Chicago price is reduced in proportion to the reduction in freight eastward.

Senator CHANDLER. If the rate from Chicago to New York were suddenly put up from 25 cents to 30 cents the farmer would gain?

Mr. COUNSELMAN. He would.

Senator CHANDLER. He would get a higher price for his product?

Mr. COUNSELMAN. Yes, sir. The freight makes the price at the seaboard.

The purport of that testimony is that an advance in the rate of freight is a benefit to the farmer. That does not require any argument at my hand, does it?

Senator TILLMAN. Is it not so absurd on its face that nobody would swallow it?

Mr. CHADWICK. I am only showing what comes before committees, and that when such testimony comes to be considered on the floor of the Senate or the House, upon the strength of which you make such and such assertions, I think you will then see that you have not secured the evidence you ought to have. If you are going to try to amend any of these bills now pending, I think you should have the proper kind of testimony before your report is made to the Senate. In order to secure this testimony you should allow the people to appear before you and criticize the proposed amendments and the bill as a whole.

Senator CLAPP. I think you have struck a practical keynote. There are two bills here, one of which provides for pooling. Have you examined that?

Mr. CHADWICK. Yes.

Senator CLAPP. If there could be a proper provision made for pooling which you would indorse, what suggestion have you to make as to the improvement of that provision?

Mr. CHADWICK. I could not answer you offhand in this way.

Senator CLAPP. But you say that we ought to get the opinions of people as to the defects of the bills. That is what we want, as I understand.

Mr. CHADWICK. But being called upon suddenly I can not give an offhand opinion that would be of value.

Senator CLAPP. We do not ask it offhand. Take that bill and study it, and give us your views.

Senator TILLMAN. That bill has not been reported to the Senate yet, and therefore it is not a matter that would meet his requirements.

Senator CLAPP. It is a tentative proposition upon which we should have the opinions of just such men as Mr. Chadwick. First, is it advisable to admit pooling under all circumstances? If so, then does this bill properly safeguard it? I would like his suggestions.

Senator TILLMAN. I want an answer from anybody who can give it.

The CHAIRMAN. Mr. Chadwick is a very intelligent gentleman. He has read the pooling clause of what is known as the Elkins bill, and I will state to Mr. Chadwick, as I have stated before, that I propose to make that as strong as it can be made by the help of intelligent men, leaving it within the power and jurisdiction of the Interstate Commerce Commission to approve or to disapprove in whole or in part of any pooling contract, agreement, or arrangement between railroads, this action to be taken by the Commission before such pooling arrangement shall become effective, so that no pooling agreement can go into effect without the consent of the Commission. Section 2 of that bill is

strong as it stands, but I will state that I have on my table a proposed amendment which will make it still stronger. That proposed amendment I shall submit to the committee, and when we come to its consideration we shall be glad to have the testimony of so intelligent a witness as Mr. Chadwick, who has evidently given the subject much thought. The question has been put by Senator Clapp and Senator Tillman in the best possible way: First, is it desirable? secondly, if so, what would you suggest? The law says the railroads must fix freight rates and publish them. The Supreme Court of the United States says that the railroads shall not make agreements as to rates, because that would be a violation of the Sherman Act. The railroads must be given some latitude, but how are they to make any agreement fixing rates? As it is, three or four railroad men are afraid now to get together in a room.

Mr. CHADWICK. The last utterances of the legislature would control, would they not?

The CHAIRMAN. Of Congress, you mean?

Mr. CHADWICK. Yes; any legislative body. The last utterances of any legislative body control. Is not that a principle of law?

The CHAIRMAN. Until something else is enacted.

Mr. CHADWICK. That controls, I say.

Senator CLAPP. There is no question about that.

Mr. CHADWICK. The last utterance of Congress on this subject, I think, was the Sherman antitrust law, and your bill might deal with that in plain English. But that law was drawn with great care, and it might seem presumptuous for a layman to make any suggestion in regard to your action in reference to that law.

Senator CLAPP. Do not understand us as expecting you to commit yourself offhand to anything in this bill.

Mr. CHADWICK. If it be the pleasure of the committee, I will appear before it at a later day, after I shall have had more time to think about this.

Senator CLAPP. But you said that the proper way to deal with this is for a bill to be prepared, and then let men who are familiar with the subject come before us and point out its defects.

Mr. CHADWICK. Yes.

Senator CLAPP. For one, I will say that I should like to have men of experience, like yourself, point out the defects of these bills and suggest improvements; and I think the committee agrees with me in that.

The CHAIRMAN. Certainly I do.

Senator TILLMAN. If I may be permitted, some of those gentlemen who were here yesterday appeared to me, while stating their grievances, to be liberal in their desire to safeguard the railroads. I make the suggestion that it might facilitate our work as a committee if these various boards of trade and chambers of commerce, through their representatives, would take these two bills as a basis, and from them prepare a bill; then after they have exhausted their ingenuity, ability, and experience in fixing up what they want, let us have a hearing from the railroads to show us wherein their opponents are wrong. I am willing to work a reasonable amount of time two or three days in a week at hearings of an hour or two each day. If we should request that, and ask them to act promptly in taking up these two bills as a basis for the preparation of another bill, I think something practical



might result. The railroad people would in that way have a chance to show us wherein these merchants and business men are trying to tamper with, injure, or destroy the railroad interests by this proposed legislation. Then we would get into a practical situation, from which could possibly be evolved some valuable legislation.

Senator CLAPP. I want to make an additional suggestion, Mr. Chairman, and which I can not help but think would be a better one. If these gentlemen should formulate a bill it would necessarily be, as between themselves, a compromise, and the views of the different men, which might be of great value to the committee, would be lost so far as they were swallowed up in the compromise bill. Now, my idea would be for these men to take these bills, which are purely tentative; Mr. Chadwick may have one view, and some one else may have another. I say, let these men get together and present their views on these distinct propositions, and then let us have the benefit of the views that they entertain, which would otherwise be lost in a compromise bill from them.

The CHAIRMAN. That is a very good suggestion.

Mr. CHADWICK. I will say that we have been over these bills time and again; we have discussed them line upon line and precept upon precept. But it would be unfair to ask me to get up here and state a definite conclusion without time for consideration, and if I did so perhaps it would not be heard. A bill of this character should have the most careful consideration and scrutiny—every word of it. I will state to the committee that I expect to leave the city this afternoon for New York State, and on Monday I expect to be in Baltimore, on this business. Quite recently I have interviewed some of the greatest men in the country; the last man I left was Mr. MacVeagh, yesterday, I think. We are working along on the lines not for compromise. The people will never compromise a hair in this matter. We will fight to the last gasp but what we will have the law properly safeguarded this time. The only place where we can not be heard is when you get into action. That is the time when the men who are in the ranks are set aside, and the journals get together and fight it out among themselves; but they do not know what they are about, and that is the great trouble.

Senator FOSTER. Let me make a suggestion: Here are two bills before the committee now, both more in a tentative shape than otherwise. The principal object of these hearings is to get views and opinions as to the merits and demerits of these bills. Then the committee, after hearing parties favorable to or opposed to these measures, will probably shape the bill to be reported to the Senate.

Mr. CHADWICK. Here is where it ought to be done.

Senator FOSTER. We have heard your evidence and the evidence of others for and against the propositions. When the bill shall be presented to the Senate those favoring or opposing the bill will be armed with full information of all the facts that you gentlemen can give to us. That is what we are trying to reach now.

The CHAIRMAN. I suggest that when you return next week or the week following, Mr. Chadwick, you appear again and give us the result of your conferences.

Senator FOSTER. The suggestion of Senator Clapp strikes me as pre-eminently practical, that you gentlemen take these two bills, examine them thoroughly, analyze every provision in both of them, and then come before the committee to-morrow, or next day, or next week.

Mr. CHADWICK. How do we know when we can get before the committee?

The CHAIRMAN. I will let you know.

Mr. CHADWICK. We will do what you want us to. But here is the point. You are now hearing one side of the case. Heretofore there has been delay by the railroad people putting things off forever and a day. If you will fix a day when both sides can be heard then we shall all be on a fair footing. But there is no use for us to try to patch up bills, and then have the railroad people come in here and deftly suggest some law that will have the effect of skinning us alive.

The CHAIRMAN. Do you not think it would be fair to suggest, for our guidance, just what you think would be a proper remedy?

Mr. CHADWICK. Why in the meantime can you not hear the railroad people, and get the thing to a focus?

Senator TILLMAN. I will tell you why: The railroads do not want anything; they are not taking steps to facilitate legislation; they are obstructing that, so far as I can understand the situation, and they will never move until you have lined up in battle array and moved forward to give battle.

Mr. CHADWICK. The point I am trying to make, Governor Tillman, is that the railroads shall not be heard except purely in rebuttal; then if they do not come in here and take a stand, they will be out of the fight. Set a day beyond which they shall not come in, and give them plenty of time and opportunity.

The CHAIRMAN. We are going to hear the railroad people, and I hope you will find it consistent to act upon the suggestion of these Senators, and perhaps come in here next week with your suggestions embodied in a paper, so as to be able to say to us that if you were drawing the bill you would make it that way, or suggest this amendment or that provision. We will hear you with pleasure. I will call a special meeting for that purpose. You shall not go without a hearing and you shall be facilitated.

Senator FOSTER. Please impress upon Mr. Chadwick, Mr. Chairman, the advisability and importance of his people discussing among themselves and suggesting legislation or no legislation upon this question of pooling.

Senator TILLMAN. Pooling, on the one hand, with its benefits to the railroads, and, on the other, giving the Interstate Commerce Commission the power to fix rates to go into effect immediately and stay in effect until reversed. Those are the two issues.

Senator FOSTER. Those are the two preliminary issues before the committee.

Senator ELKINS, *Chairman*.

APRIL 18, 1902.

SIR: As I am obliged to go to Chicago to-day, may I ask you to kindly permit the following suggestions to go to the Committee on Interstate Commerce:

. The rate, or relation of rates, being fixed primarily by the carrier, is, therefore, *ex parte*.

Objection being raised by any party in interest, both sides are heard by the Commission, which, acting as arbitrator in the hearing, determines what is proper and necessary to correct any wrong which may be found to exist, and issues an order as provided.

An appeal may be taken from the decision of the Commission.

Thus far the question has been treated by experts—carrier, shipper, Commission.

That all the proceedings may continue to enjoy the benefits of expert treatment, why may not the Attorney-General of the United States be vested with power to

name any three judges of the United States district courts to constitute a special court with jurisdiction in all the States and Territories to review all causes which may arise under the provisions of the act to regulate commerce, and to administer all receiverships, etc., in common carrier causes?

From the findings of such court appeal to be only to the Supreme Court.

The creation of the court of appeals since the act to regulate commerce became a law has increased considerably the time and expense of reaching the final decision.

England, through the Parliament, has created a court composed of one judge, one railroad man, and one business man.

The findings of that court are, I understand, conclusive except on questions of law. They make the rates, which, however, are commonly said to be very high on freights.

They provide that there shall be no discrimination between parties and places.

If this country forms some such court as I have suggested to administer railroad receiverships the effect would seem to be beneficial to vested interests.

The bankrupt road could not be used as a club, as formerly, to distress solvent and prosperous roads who would have to pay interest, dividends, etc.

I hope I have been able to partly outline this subject and regret having to annoy you with so much manuscript.

I am, sir, with high respect, your obedient servant,

WM. H. CHADWICK,

*Chairman Transportation Committee, Board of Trade of Chicago.*

### STATEMENT OF T. W. TOMLINSON.

The CHAIRMAN. Please state whom you represent here.

Mr. TOMLINSON. I am the railway representative of the Chicago Live Stock Exchange. I have the honor to represent not only that exchange, but the Cattle Raising Association of Texas, and conjointly with Judge Springer I have also the honor to represent the National Live Stock Association. That association comprehends practically all the live stock associations in this country, and I believe you can safely say that I represent the live stock industry of this country—a very poor representative it is true, but at least I have that honor.

The CHAIRMAN. We shall be glad to hear you. There are just two points here that give us concern, and we must settle them. Can you give us light on the point of giving power to the Interstate Commerce Commission to change rates and the power to pool under proper restriction?

Mr. TOMLINSON. The live stock industry objects to any pooling bill. The railroads indorse that, and want pooling for no other purpose than to increase their rates. We believe that in the aggregate the earnings of the railroads to-day give them a very fair return upon their investment. We will not indorse any machinery that will enable them to extract any more money without some absolute assurance that if they get more of this competitive traffic affected by the pool that additional traffic will be handled at lesser rates.

As to the making of the orders of the Interstate Commerce Commission effective immediately, the bill which we indorse, the Nelson bill, gives, as I read it, fifty days practically for the court to pass upon the order of the Commission. We think that is ample and long enough. The bill of your honorable chairman recognizes at least that the rates of the Commission ought to be in effect a year. As a matter of fact, if you can not get some immediate results from the order of the Commission the conditions will doubtless change in the course of a year so that it will be of no benefit to anybody at the end of that time.

Further than that, you must always bear in mind that there are many people interested in rates other than those who actually pay the freight. In other words, the producer and consumer may be indirectly affected,

and yet not be the ones who actually pay the freight. Hence those people would have no redress in a court from unreasonable charges.

We are certain of our position on those two points. I trust I have made it plain to you, and I shall now be very glad to answer any questions.

Senator TILLMAN. You are very strenuous in your statement. The matter has gone beyond a plea, as I understand, for action by Congress in restraint of the condition of confusion worse confounded in which the roads are left practically free to do as they please.

Mr. TOMLINSON. Yes; that is the condition. The situation has been very serious. There have been very portentous changes in the railroad situation, but every change has been such as to strengthen their grasp upon the country. There used to be competition, but that is now a word almost without meaning as regards the railroad transportation facilities of the country. It is a very, very serious matter. The public should be safeguarded better than is even provided in the Nelson bill. While we indorse the Nelson bill, I feel personally that legislation ought to go farther.

Senator CLAPP. What would you suggest in addition to the Nelson bill?

Mr. TOMLINSON. I do not know that I could suggest anything except to make the decision of the Commission absolutely final.

Senator CLAPP. Without appeal to the courts?

Mr. TOMLINSON. Yes. I do not know why we can not rely upon the Commission as well as upon the courts. If the members of that Commission are not to be relied upon, they ought not to be there.

Senator CLAPP. Have you ever thought of the proposition that an action which involves property rights must have its day in court somewhere?

Mr. TOMLINSON. Yes. I have thought the matter over very carefully, and I am quite satisfied in my own mind that the interests of the entire country would be just as well safeguarded by having the Commission's decision final.

Senator CLAPP. I think you do not understand my question, which was as to the validity of a law which affects property rights without giving the parties their day in court.

Mr. TOMLINSON. I assume that they fully have their day in court when they appear before the Commission.

Senator TILLMAN. In other words, Mr. Tomlinson, you consider that as the court itself is an appointive one, created by the President with the consent of the Senate, the Interstate Commerce Commission, getting its authority from the same source, backed by act of Congress, ought to be fully as able to render a final decision as a court devoted to ordinary legal matters?

Mr. TOMLINSON. You have stated my view practically.

Senator CLAPP. That is not the question. The question I asked is whether, under our Constitution, we can delegate authority to a tribunal to make an order which affects property rights without giving the owners an opportunity to appeal to the courts. Have you ever given that point consideration?

Mr. TOMLINSON. I do not believe I can make any further answer than I did a moment ago. I am not a lawyer and I have not paid very much attention to it from a legal standpoint. I am only expressing my views as to the equity and fairness of the matter as they occur to me.

The CHAIRMAN. In expressing your views about pooling, do you express the views of all the parties you represent?

Mr. TOMLINSON. Yes.

The CHAIRMAN. They have had that matter under consideration?

Mr. TOMLINSON. They have.

The CHAIRMAN. And authorized you to make this statement?

Mr. TOMLINSON, Yes.

Senator CLAPP. That is, the statement that there should be no appeal from the order of the Commission?

Mr. TOMLINSON. That there should be no appeal?

Senator CLAPP. That is what the chairman meant.

Senator TILLMAN. No. He was speaking of pooling. He said he was not entirely satisfied with the Nelson bill; that he thought it did not go far enough; and that personally he was in favor of going to the point of leaving no appeal.

Senator CLAPP. I understood the chairman's question to go to that point, but he did not so understand it.

The CHAIRMAN. It covered both points.

Mr. TOMLINSON. The association which I have the honor to represent indorses and supports the Nelson bill.

Senator TILLMAN. And that gives the right of appeal.

Mr. TOMLINSON. Mr. Chairman, before I leave the stand I wish to say that Mr. Barry asked me in his absence to file with you a petition from merchants, members of the Baltimore Chamber of Commerce, in support of this Nelson bill, and with your permission I will file it for the purpose of having it appear in the record.

The CHAIRMAN. Very well.

The petition referred to is as follows:

BALTIMORE, MD., *April 1, 1902.*

The INTERSTATE COMMERCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES,  
*Washington, D. C.*

GENTLEMEN: The undersigned merchants, members of the chamber of commerce, Baltimore, respectfully petition your honorable body to favor the adoption of the interstate commerce legislation now before you, embodied in a bill known as H. R. 8337, amending the interstate commerce law and giving it authority and force.

It is plain to all men that a few more years of discrimination and favoritism on the part of the railroads in the interest of the few shippers as against the many, will make business, except for the very wealthy, an impossibility. Already we have seen our fellow-merchant shrivel up and drop out by the wayside, ourselves have suffered and must in turn be driven from the marts of trade, if this unfair favoritism is continued. All we ask is a fair field and no favor, and this we hope is found in H. R. 8337, which we pray you will speedily enact into law.

W. G. Bishop & Co., George Frame, James J. Comer & Co., W. M. Knight, Frank Kraft, H. A. Lederer, H. C. Wright, The Baltimore Pearl Hominy Co., H. D. Eidman & Bro., J. A. Loane & Co., Andrew W. Woodall, C. Bosley Littig & Co., John R. Hudgens & Co., I. K. B. Emory & Co., Dudley & Carpenter, Edelen Bros., Wm. G. Scarlett & Co., C. S. Schermerhorn, Robert Marye, John S. Smith & Co., Geo. P. Williar & Son, Pitt Bros. Co., John S. Hayes & Co., Frank Mudge, W. Rühl & Sons, W. A. Simpson & Co., D. C. Timanus & Bro., Frank M. Cline & Co., J. H. Sherbert, F. Megenhardt, Rich'd S. Wells, Saml. J. Diggs & Son, J. A. Manger & Co., John C. Legg & Co., Wm. Simpson, R. L. Burwell, J. Oliver Neal, J. H. Maynadier, Robinson & Jackson, James Lake, J. M. Wharton, Loney & Co., James J. Swaine, Wm. H. Spedden & Bro., Thos. M. Dinsmore & Co., Daniel Rider, Seaton Bros. & Co., H. S. Belt, O'Neill & Co., Charles C. Gorsch, Jas. T. Clendenin, Chas. England & Co., S. M. Lyell & Co., Jos. T. Flautt, sr., Fahey & Ryley, Chas. H. Gibbs, Stagle & Myers, C. B. Watkins, Hildorfer & Schuchhardt, E. Stern & Bro., E. B. Owens & Co.

Senator CLAPP. Is this Judge Springer you speak of, ex-Congressman Springer?

Mr. TOMLINSON. Yes.

Senator CLAPP. He was also a judge in Oklahoma Territory; is that the man?

Mr. TOMLINSON. Yes. I said that conjointly with him I have the honor to represent the National Livestock Association, whose headquarters are in Denver.

Senator TILLMAN. I should like to ask you, if you are willing to express an opinion offhand, as to what effect the Nelson bill, for instance, would have in giving protection to the shippers, provided that the railroad consolidation has been effected, such as we were told this week had taken place, and we do not know but that it is true, by which every road from here to Texas, south of the Potomac and Ohio rivers, comes under one management. Would not that be a railroad pool that would practically leave the roads in absolute possession of the field, and we should have no protection whatever unless Congress specifically regulates the rates?

Mr. TOMLINSON. With the passage of the Nelson bill, the public would be at least assured of a tribunal who would have the power, after hearing, to say what was a reasonable rate. No tribunal has that power now.

Senator TILLMAN. Then you think that it is absolutely essential to the business interests of the country that Congress should do something by way of protection against this absorption or consolidation of the roads which tends toward making all roads practically one road throughout the United States?

Mr. TOMLINSON. I think that is absolutely necessary.

#### STATEMENT OF JOHN D. KERNAN.

The CHAIRMAN. Please state your name, business or occupation, and whom you represent.

Mr. KERNAN. My name is John D. Kernan; my office is at 39 Liberty street, New York City. I appear here as counsel for the New York Produce Exchange.

The CHAIRMAN. Proceed with your statement. We shall be very glad to hear you.

Mr. KERNAN. You know this subject is one to which a man may devote a good deal of his time, day and night, and then feel that he has not very greatly succeeded; but I shall endeavor to be brief.

I am here to say that since the passage of the interstate-commerce act I have given much thought and study to the operations of that law. I was the first chairman of the New York State railroad commission, serving in that capacity from 1873 to 1877, when I resigned. Since then I have been engaged in a great many cases brought before the Interstate Commerce Commission, representing the produce exchange and others, and that duty has led me to give thought, study, and investigation to the question.

We think that the Nelson-Corliss bill, with some amendments and perhaps additions, is one that meets the recognized necessities of the situation, that something should be done. If the interstate-commerce law is to be continued as the policy of the Government for the purpose of regulating the relations between the carriers and the people, some-

thing must be done to increase the efficiency of the orders made by the Commission after investigation, and to facilitate and hasten the remedy when rates are found to be unjust and unreasonable.

I may say at the outset that I think you will find 99 per cent of the complaints made before the Commission since its organization have not been upon the subject of the rates being too high. I do not think to-day that that is of any material importance. While there was an increase in rates of 35 per cent on the 1st of January, 1900, yet that was no more, I thought, than the increase ought to be in fairness, in view of the long period of disaster through which the railroads had passed and the reduction of rates that had occurred during that period. It is not the matter of high rates. The difficulty we have got to think about and the difficulty that this bill needs to remedy is the relation of rates to the competition between business men. I do not care whether the rate from New York City to Chicago on my freight is 50 cents per hundred, 60 cents, or 75 cents. But I do very much care that upon my freight reaching my customer in Chicago the relation of my competitors' rights to mine shall be relatively fair, that one man shall have no more advantage in Chicago than I have.

This can only be secured by a body having the power to take in hand the actual situation and investigate in reference to it. The remedies proposed by this individual man or that individual man have ceased to be of use, as applied to this situation, where the great question between all the manufacturers and business men of the country is not as to just how much they pay, but that their relations to their competitors in reaching common markets shall all be fair and just.

I must first say that that bill, with some additions, would, in my opinion, be all right. In the first place, the most important amendment to be suggested, to my mind, is that on page 6.

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days.

I think that ought to be sixty days.

And the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until the further order of the court.

These words ought also to be stricken out—they have no business in the law—from the word “also” down to the word “suspend;” so that if both these amendments be adopted, it will read:

The filing of a petition to review an order shall of itself suspend the effect of such order for sixty days, and the court before which the same is pending may suspend the operation of the order during the pendency of the proceedings in review, or until the further order of the court, etc.

You can not undertake to break down the jurisdiction of the courts of the United States in that way. A railroad comes before the court and says, “Here is an order of the Interstate Commerce Commission that is unjust; we want to appeal; we want a stay pending appeal.” The court says, “Under the ordinary equity jurisdiction of a United States court you should present a case where it is justifiable for us to suspend the operation of an order pending appeal; but we find that Congress in this new act has stated that it must plainly appear to us—that is, it must more plainly appear to the court than in an ordinary

case—that it has jurisdiction—before we could grant the petition.” I think that would be unconstitutional. You can not enact worse legislation than that. I think, also, when you enter upon legislation in regard to this railroad question you can not accomplish anything good by any law or device unless it is absolutely right. Otherwise it does more harm than good.

Then, on page 8:

If a carrier neglects or refuses to obey an order which is obligatory upon it as above—

I think that would be made clearer by saying, “obey a lawful order.” Nobody is obliged in this country to obey any order unless it is a lawful order. So I suggest that after the word you strike out “an” and insert “a lawful” in line 10.

If those two changes be made I think there is no danger whatever in this bill of the railroads, through this power vested in this Commission, being injuriously affected in any way by any order. They are not obliged to obey any order but a lawful order. The remedies of the United States courts, through injunction proceedings, etc., with this power to suspend the application of the order and to remain suspended pending appeal, should all be left just exactly as now, without any attempt in this bill to change the powers of the court. I think those are two important changes that ought to be made.

I can not go through the bill in detail, but I will refer to one other matter. It provides that corporations shall be punishable by fine. That is right. Under the present law you can not punish a corporation, which is the only one that ought to be liable to punishment. It removes imprisonment, which is all wrong. You can not accomplish anything by a provision to imprison the officers of a corporation. That provision only embarrasses the application of the law. It drops imprisonment and provides penalties only.

One of the bills that has been introduced provides that pooling may be authorized. I want to state briefly the objections to that, and I shall not state them in my own language, but in the language of the ablest railroad man in my country has ever produced. I think he was recognized by railroads as having the ablest mind on this traffic question of any man who ever held a position in railroad management in this country. I refer to Mr. Alfred Fink. His training began in this business by employment on some of the railroad systems of the country when he was 45 or 50 years old, at first being traffic manager of the Louisville and Nashville. When the Interstate Commission was organized he was recognized by the Commission as the ablest man in the country upon questions the Commission had to meet. I examined him at great length on the pooling question.

I may say here that I appeared before the Interstate Commerce Committee at one time when it held sessions in New York City, when I talked two or three days as a witness, and as a result of my testimony there I was requested to communicate with the committee and assist in drawing a bill. The suggestions I made, and which were adopted, were based upon the English act of 1854 in all provisions, except as to the appointment of the Commission, and the bill is substantially to-day as I drew it. I advised against the prohibition of pooling. I thought it wise to leave pooling as it was under the common law, which prohibited carriers from enforcing pooling agreements among themselves.



Leaving it in that way I thought they would work out the problem so that in the end it would lead to something in that line which would be a public advantage. But the House, you know, put that provision in there, through Mr. Reagan.

A pool is only possible in two ways, as Mr. Fink said when I examined him upon the question, and Mr. Fink's strong point was this: He knew everything upon this question from the railroad standpoint, but he was the only railroad man I ever knew who could get up and state the people's side of the question as well as the railroad side. He knew the whole subject on both sides, and he could reach as just conclusions as any man I ever heard talk upon the question. For instance, as regards legislation by Congress, many of his railroads kicked against it; but he always insisted that it was a matter of safety and protection to have an interstate-commerce law which should protect the railroads as well as protect the people. He was always right. He was a German, of philosophic mind, and could take in all the bearings of the whole question.

There are two kinds of pooling and only two kinds that have ever been practiced: One is a money pool. For instance, there are two lines between New York and Chicago competing for business as between themselves. They agree that one company shall take 75 per cent of the traffic and the other 25 per cent. I asked Mr. Fink, "How about a money pool?" A money pool would be one where, if the line entitled to the 25 per cent found at the end of its traffic period that it had only received 10 per cent, the other line would pay the remaining 15 per cent in money. Some agreements are to repay the difference in money. Mr. Fink said the difficulty about a money pool was this: That it had been found impracticable, because a road can not live without traffic. He said that many of the big lines in competition with the 25 per cent road would be perfectly willing to take the whole 100 per cent of its traffic for one or two years and pay it three times the money that it would have earned if it had carried its portion of the traffic. But that was impossible. Why? Because it wiped out that road in the end. A road can not live without traffic. It has its equipment to keep up, its employees to pay, and it must have traffic to keep going. A money pool, therefore, simply means the extinction and wiping out of the small members of the pool in the course of two or three or four years.

What is the other kind of pooling? That is traffic pooling. That is where they agree that each of the lines in the pool gets its percentage of the traffic. Mr. Fink always maintained that that was the only practical way of pooling. But the inherent difficulty about that, the difficulty for which no remedy has been proposed—and I think the gentlemen who are in favor of pooling will have great difficulty in proposing an adequate remedy—is that it can not be maintained without violating the inherent right of every shipper to route his own traffic. You are at Chicago, and you want to ship grain to New York; you want your grain to go by the Pennsylvania road, not by the New York Central, because the Pennsylvania is the shortest, quickest, and best equipped.

But that being so, if 25 per cent of your traffic, under a pooling arrangement, has got to go around three or four hundred miles farther by the Canadian Pacific or the Grand Trunk, then your right to route your traffic has got to be violated by the sending of your

traffic by the longer and poorer line. That is the difficulty about traffic pooling that has never been answered, so far as I know. I think it interferes with the inalienable right, which must be protected, of every shipper to route his traffic as he pleases, and that you can not justly compel shippers to put their traffic in the hands of railroads, to be routed by the poorer and slower routes, without violating that right. I do not think that any such proposition can be considered.

Senator TILLMAN. Right there, I should like to ask you if the remedy for that would not be to allow the longer and poorer road a higher rate, supposing pooling were granted, or a lower rate to get more traffic. In other words, does not pooling destroy competition, and is it not, therefore, in itself bad? Are you opposed to pooling or not?

Mr. KERNAN. I am not opposed to pooling in a certain way. I have never changed my idea from what I originally said about that, that it was unwise to put a provision in the interstate-commerce law about pooling. There are good things about it, and the railroads were working it out under the simple, common-law disability. Leave it there. I think they have worked it out through the joint-ownership proposition.

The CHAIRMAN. You know there are a great many railroads opposed to pooling.

Mr. KERNAN. I know it.

The CHAIRMAN. I think that is one of our troubles.

Mr. KERNAN. I think that the prohibition of pooling has led to the joint ownership of competing lines, and that is much better. It is a great deal easier for Congress and the courts and the Commission to deal with a single one of half a dozen competing lines than it is to deal with a pool of those lines. Why? For this reason: Here are a weak road and a strong road in a pool. You have constantly to be yielding to the weak line what it does not deserve in order that it may live, so that you are constantly forced to do something which, under the laws of trade, is wrong in order to maintain the pool and keep it going. But if the small line and the big line come to be owned by one man, then don't you see that the revenues of both roads go into one pool, and then the question always is simply whether the earnings of the entire system are sufficient to permit this, that, or the other road to live. You do not have to keep dealing with exceptional conditions, which are always forcing you to do something wrong, under the requirements of trade, in order to keep a certain road alive.

Senator TILLMAN. I would like to ask you, Mr. Kernan, whether you can conceive of competing lines coming under one ownership? They would be natural competitors if they were owned by different people, but if owned by one person can there be competition?

Mr. KERNAN. Why, no.

Senator TILLMAN. You said a while ago that this condition was bringing about single ownership of competing lines.

Mr. KERNAN. Certainly.

Senator TILLMAN. Then they are no longer competitors?

Mr. KERNAN. Certainly, there is no competition left. Where association is possible competition is no longer possible. That is an old axiom that is being worked out. Competition has been diminished. That is what we relied upon when railroads were started—that competition would protect the public. But that has all been wiped out. That is the way they have accomplished pooling. I think it is safer to

have all roads under one ownership, where they can all be dealt with as a single system, than where you have a half a dozen in a pool. I think the tendency of legislation has been in that direction.

Senator TILLMAN. Can you explain the difference between a pool of different owners and a combination with one owner?

Mr. KERNAN. Suppose here are two systems of six railroads, each competing. If those six roads are put into one ownership, that eliminates competition between those six roads. If the other six are put into one ownership, that eliminates competition among those six roads. Then you still have left competition between the two systems. Bring them into one ownership and then competition is entirely eliminated. One ownership of the whole business will finally be brought about. It is steadily progressing.

Senator TILLMAN. But that creates monopoly and leaves us at the mercy of monopoly.

Mr. KERNAN. No, sir; I think Congress can deal more easily with single ownership of lines than it can with competing ownership, because, don't you see, in every pool the entire pressure is to give to the weak line something to which it is not entitled?

The CHAIRMAN. Is it your judgment that pooling has always protected the weaker and smaller line?

Mr. KERNAN. I think that every pool that was ever formed was forced into existence through some bankrupt corporation. A corporation in the hands of a receiver can ultimately force a pool.

The CHAIRMAN. That is my idea.

Mr. KERNAN. No pool was ever made except through the action of some bankrupt corporation.

The CHAIRMAN. As a general proposition, were not the larger roads opposed to pooling?

Mr. KERNAN. Yes. That is a matter of simple observation. Take the New York Central; it does a great business and gets great returns. Then there enters into the problem a competing line, which goes into the hands of a receiver. It does not have to earn fixed charges or pay interest on bonds. It pays nothing except operating expenses. If that road has an entrance into Chicago, and has 5 per cent of the Chicago business, it can cut the rates on the entire 95 per cent that goes by the other lines. Railroads do not want pooling unless they are forced into it.

Senator TILLMAN. Are not such bankrupt railroads subject to the orders of the court? Is not the receiver the servant of the court? What right has the receiver to cut under the rates fixed by business interests or by the Interstate Commerce Commission?

Mr. KERNAN. It is because his road must have traffic; otherwise he can not pay expenses, and it is his business to do that. Therefore he is justified in taking such measures as will at any rate prevent his discharge from his receivership. He must discharge his duties as receiver. He does not have to pay any interest on bonds; he does not have to pay dividends on stock. All he has to do is to operate his road, pay operating expenses, and show a good balance sheet at the end of the business.

The CHAIRMAN. When he is out of the pool that is what he says. When he is in the pool he says, "Go ahead, and we will treat you fairly."

Mr. KERNAN. That involves a commission or something he is not entitled to under the ordinary laws of trade.

I want to submit to the committee a suggestion, that there be added to the bill a provision which I think would substantially accomplish all that is aimed at in the direction of giving the railroads the right to pool. You want to draw the distinction between pooling and what I suggest.

Senator TILLMAN. May I ask what are your relations to the Produce Exchange?

Mr. KERNAN. I am its counsel.

Senator TILLMAN. Do they instruct you to appear here?

Mr. KERNAN. I am employed by them as counsel.

Senator TILLMAN. Were you sent here specifically to appear before this committee?

Mr. KERNAN. I came over with a committee, but the other members of that committee had to go back. They did all the talking first. I appeared before the House committee this morning, and have just come from there.

The CHAIRMAN. You stated a moment ago that you have a remedy of some importance that you want to suggest.

Mr. KERNAN. Yes, sir. I think it is not wise to eliminate pooling, because it violates rights, as I have said. I think it is wise to provide that carriers subject to the provisions of this act shall have the right to form associations to secure the establishment and maintenance of just, reasonable, nonpreferential, uniform, and stable rates, to be promulgated and enforced under reasonable rules and regulations as to interstate traffic, those rates to be filed with the Commission, subject to their approval or disapproval.

The Interstate Commerce Commission is not to be authorized to take the initiative, however. The railroads are the ones to take the initiative, and they should be allowed to make agreements as they please. All that the Government should do in the matter through any of its agencies is to inspect the provisions of such agreements and see whether there be anything in them which violates public rights. This is not pooling. This is to authorize the association of railroads so that they may agree upon rates, fix tariffs, uniform tariffs throughout the United States as to rates, and to impose penalties to be recovered of each other in case they fail to maintain the tariff rates. There you see the beauty of it is that they fix their own penalties for their own violations of their contracts. Therefore there is no injustice done in leaving them to recover from each other whatever they can.

They should also agree upon a uniform classification throughout the United States, which is a very important subject. I think that is all right.

I think that is giving the railroads a great deal—all they need and all they ought to have. They ought to be authorized to form traffic associations by which they can keep, by agreement among themselves, jurisdiction over these subjects as to the establishment and maintenance of rates, as to penalties for rate cutting, and as to uniform classifications. They can not do that now, because there is no authority for it.

The CHAIRMAN. The decision of the Supreme Court of the trans-Missouri case says that they can not agree now.

Mr. KERNAN. Yes. That removes the difficulty really as to the prohibition against pooling. But it tends to prohibit the formation of such associations for the purpose of doing what is entirely right and just.

The CHAIRMAN. Will you leave that language in your testimony?

Mr. KERNAN. I think the Corliss bill should be amended in the particulars I suggest, and in one other particular. It provides that "every violation of this act shall be prosecuted," etc. I think that should read: "Every willful violation of this act." An innocent violation ought not to be punished.

The CHAIRMAN. That word "willful" ought to go in there.

Mr. KERNAN. And I think the word "lawful" should be inserted before the word "order" in line 10 on page 8, as I have already suggested. Then I think those words "also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise," as they appear in lines 11 to 14 on page 6, should be stricken out. Whatever power is to be given to the United States courts, under their ordinary constitutional jurisdiction to suspend the operation of the Commission's orders issued in their discretion, I think no new rule of that kind would be justifiable, and I do not think it would be constitutional.

The CHAIRMAN. Will you give us that memorandum which you have on the subject of pooling?

Mr. KERNAN. With pleasure.

Carriers subject to the provisions of this act, with respect to traffic subject to the act, may form associations to secure the establishment and maintenance of just, reasonable, nonpreferential, uniform, and stable rates, and for the promulgation and enforcement of reasonable and just rules and regulations as to the interchange of interstate traffic and the conduct of interstate business upon the following conditions:

(a) Articles of agreement shall be subscribed by the parties thereto, stating, among other things, that they are entered into subject to the provisions of this section; the terms upon which new parties may come in; how the decisions of the association are to be made and enforced; and the length of time for which the association shall continue, which shall not be more than ten years. Such articles when subscribed and in effect agreeably to the provisions of this section shall be legally binding upon the parties thereto, and be legally enforceable between them.

(b) The articles of association shall be filed with the Commission at least twenty days before they take effect. If the Commission upon inspection of the same is of the opinion that their operation would result in unreasonable rates, unjust discriminations, insufficient service to the public, or would in any manner contravene the provisions of this act, it shall enter an order disapproving the same. In connection with such order the Commission shall file a statement of its reasons for its disapproval. Said order shall be final and conclusive.

(c) If the Commission, upon inquiry into the actual operation of the association after the same has gone into effect, is of the opinion that it results in unreasonable rates, unjust discriminations, inadequate service, or is in any respect in contravention of this act, it may enter an order requiring the same to be terminated on the date named, which shall not be less than ten days from the making of the order. Such order shall be final and the effect of it shall be to render such articles of agreement null and void from and after the date named, except as to claims between the parties arising prior to that date.

(d) The Commission shall have the right to examine by its duly authorized agents the files and proceedings of such association, including all contracts, records, documents, and other papers, and it may require said association to file with it from time to time copies of decisions promulgated by it and of its minutes of proceedings or of other papers received or issued.

All orders issued by associations thus formed that in any wise affect rates shall be filed with the Commission as provided in the original act in relation to the filing of tariffs.

Every agreement for the formation of such associations as are authorized by this section is prohibited except as hereby authorized, and every carrier or representative of a carrier, acting as a member of such an association, or acting for a member of such association, whether the same exists by virtue of a definite agreement or not, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be subject to a penalty of \$5,000 for each day said carrier or representative continues a

member thereof or so acts, which penalty shall be enforced in the manner provided for the enforcement of those penalties imposed by the tenth section of said act.

The CHAIRMAN. Section 16 of the law of 1887, the original interstate-commerce act, formerly overlooked, has been interpreted by Judge Groscup, where they were unable to punish shippers and carriers for violating the law as to rebates or discriminations.

Mr. KERNAN. Under that act the shippers could not be punished at all, whereas they ought to be punished just as well as the railroads.

The CHAIRMAN. The present law is:

That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform, any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission, or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States.

I want to draw your attention to that. It seems now that the provisions of section 16 had been overlooked, limiting the power to compel all railroads, whether in associations or not, to observe the fixed rates and maintain them, by injunction on petition to the circuit court of the United States in equity. Has your attention been drawn to that decision?

Mr. KERNAN. I know that decision.

The CHAIRMAN. Have you anything to say on that point?

Mr. KERNAN. As to whether that gives us a sufficient remedy? It is partial only. You will find that this is the present condition and difficulty: That owing to the methods of United States courts, the delays, the waiting, practically you can not get anything decided in time to be of use.

Take, for instance, the import-rate case that I carried through for the New York Board of Trade and Transportation before the Interstate Commerce Commission, involving a very important question, the question whether the rate upon imports should be the same as the domestic rate between the seaboard and interior points or whether it should be lower. It also involved the same question as to exports, whether there could be a lower export rate than the domestic rate to the seaboard, in order to meet the conditions of foreign markets. All the trunk lines made defense before the Commission. It took a year and a half to get that case through the Interstate Commerce Commission. We took a great deal of testimony and heard everybody.

The Commission finally made an order in our favor, and eighteen railroads, including the great trunk lines, obeyed the order; one or two disobeyed it. Then I took the case to the United States court in 1892; it was expedited and carried through the circuit court of appeals, and then to the Supreme Court. After the first argument before the Supreme Court they ordered a reargument. It was reargued, and then decision was delayed for sixteen months. It actually took four years and a half to get a decision of that question.

This shows that this question of whether the original act is in force is a very serious one. The Commission itself, all the railroads, and all the shippers supposed for ten years, until that decision was rendered, that Congress had given the Commission all the power asked for.

In that import-rate case, how was it decided against us? I had Wallace, circuit judge; I had the three judges unanimously in the circuit

court of appeals; I had Harlan, Brown, and the Chief Justice in the Supreme Court. In other words, I had seven out of the twelve judges who passed upon the question holding that the power was given. But five happened to be in the court of last resort, where they could finish me, and so it was decided that the interstate-commerce act could not be construed as containing any of these powers. So you see it has been a pretty close question among lawyers and judges whether this act did not originally give the power which ought to have been given.

Another thing I want the committee to remember, bearing upon the danger of giving to a commission the power sought here. There has never been a decision of any United States court, where the question was made, that the order of the Commission was not decided to be intrinsically fair and just, so far as the amount, the rate, or the discrimination was concerned. It has all finally turned simply on the question whether the Commission had the power.

I thank you, gentlemen, for your attention.

The committee adjourned.

---

At the sitting of the committee on Friday, May 23, 1902, the following-named gentlemen appeared: H. H. Porter, of New York; Albert W. Sullivan, of Chicago, assistant second vice-president of the Illinois Central Railroad Company; H. R. Fuller, representing the Brotherhood of Locomotive Engineers and other organizations of railroad employees; Hon. C. J. Faulkner, representing the Southern Railway Company; Hon. Martin A. Knapp and Hon. James D. Yeomans, members of the Interstate Commerce Commission; Edward A. Moseley, secretary of the Interstate Commerce Commission; Col. John Cassells, representing the Pennsylvania Railroad Company; W. B. Thompson, of Thompson & Slater, Washington, D. C.; A. B. Browne (of Britton & Gray, Washington, D. C.), representing the Atchison, Topeka and Santa Fe Railroad Company; and F. G. Gannon, third vice-president of the Southern Railway Company.

#### STATEMENT OF H. H. PORTER.

The CHAIRMAN. Please state your name, present place of residence, and your business.

Mr. PORTER. H. H. Porter; now resident in New York; connected with railroads.

The CHAIRMAN. I sent you copies of the three bills under consideration by this committee, and we should be glad to have a full and free expression of your views as to what ought to be done by this Congress.

Mr. PORTER. From having been connected more or less with railroad operations under the interstate-commerce law, my conclusion is that the first thing to do is to repeal that law from beginning to end. By that I do not mean that it has been entirely a mistake, for the people have learned something, and the railroad officials have learned something since that law was originally enacted; and I think there is a general desire on all sides to have the present law repealed and a new and simplified law enacted in its place. There is in the present law too much detail, so that I think the best thing to do is just what a new management in a corporation often has to do when starting out under

old by-laws, and that is to repeal them and begin again at the foundation. I believe the public have learned that there is a great deal in the present law that is worse than useless, and is destructive to the interests of both the public and the railroads. The public want steady rates; they want fair rates between people and places all over the United States; and then they want those fair rates enforced. They do not want on the statute book a set of arbitrary laws, or laws full of arbitrary details, to which it is impossible to conform.

The suggestion I have to make is very simple. It is that the law be simplified down to a declaration in the plainest language that the rates shall be stable, that they shall be fair, and that they shall be just between people and places.

That is a very easy statement to make, but it is much harder to enforce, because there is a quality in railroad rates, just as there is in almost everything else. There is quality in sugar, in silk, in wheat, corn, etc., and so there is quality in railroad rates; and if you enforce the same rates for good railroad transportation and financial responsibility that you enforce on poor roads with poor equipment and facilities, you are going to have chaos.

My idea is that railroad companies should have the privilege of making any agreements that they choose between themselves; that they should be held responsible for violating those agreements; and then, they having made those agreements, I would give the courts the absolute power to enforce them. And I would give the Interstate Commerce Commission just the same power of temporary injunction that the courts now have, subject, of course, to approval or disapproval upon review by the courts. This would make it simple, and the railroads could attend to the pooling question to suit themselves within the principle of the law. Leave out all possible details in the law, and let the railroads in their own way, from their own experience, correct the evils which have grown up, but make them absolutely responsible. Let them make any tariffs or any arrangements with each other consistent with the law that they choose, because that is absolutely necessary in order to have steady rates where some railroads have inferior lines as against better ones.

The first pool I ever knew to be made was the most successful and long-enduring one that was ever made in my opinion. The Rock Island and the Northwestern railroads, both entering Omaha, got into a quarrel, and they were carrying freights at all kinds of rates. The same man was elected president of both roads, and, of course, he wanted that quarrel stopped. Just at that time the Burlington Railroad opened its line into Omaha, and thereupon a third element came into the problem. At that time I was in the directorate of both the Northwestern and Rock Island railroads, and we finally agreed that there was no solution of this difficulty except through pooling, and we made a verbal pool.

We knew there was nothing in the law authorizing a pool. (When I speak now of railroads being allowed to pool, I want the pool to be legal and to hold. I do not want verbal pools. I want the law to provide for their enforcement.) Mr. Harris was president of the Burlington, and we sent for him. He came and said, "Well, we are just opened; we do not know exactly how the business is, and we have got to have our chance to test how much business we can get." After discussing the matter for half an hour, Mr. Harris said, "Mr. Tracey,



what proportion of the business are you going to give us if we go into this?" Mr. Tracey said, very emphatically, "You will fight until you get it. We will each take one-third." And thereupon the pool was made.

Senator MILLARD. I remember that was a strong pool.

Mr. PORTER. Railroads will fight to get their share of the business. Self-protection, the first law of nature, demands this. Let this simple principle be at the foundation: That the railroads can have all freedom to agree with each other if they can, within the principle of the law. If they can not, of course that is the end of it, and they must fight until they can. If they make any particular rate or rates in their tariffs that the Interstate Commerce Commission thinks wrong, let the Commission stop the particular item or items; those rates not objected to to continue in effect. If they went into court, the court would grant a temporary injunction. Give the Interstate Commerce Commission power to grant the same temporary injunction. Until we have a law of that kind we shall have to continue under the present demoralizing conditions, which involve disrespect of law, and, on the part of the railroad companies, disrespect of each other.

I think we have demonstrated thoroughly in the United States to-day that the putting together of properties is to the benefit of all interests. I think some of you gentlemen will bear me out in the assertion that more than twenty-five years ago Jay Gould was called the most unpopular monopolist in the United States. W. H. Vanderbilt and others then controlled the Western Union Telegraph, and Gould was building telegraph lines here and there and cutting into the telegraph business everywhere he could. The Western Union necessarily followed him in the competition by cutting the rates in two, and then cutting them again. Every legislature was trying some legislative cure for that unstable transportation difficulty.

The telegraph lines were all broken up and values chaotic, and then Jay Gould conceived the idea of putting telegraph properties together. He did it, and he did it so quickly that the legislatures could not act in time to stop him. Every newspaper and the whole public sentiment was opposed to it on the ground that they were not going to be able to secure freedom of information, and cost would be increased; that Jay Gould would be able to secure information for personal speculation to individual and public injury. Notwithstanding that opposition on the part of the newspapers and public, however, there has not been for years a serious complaint against the telegraph. His remedy was perfect and the public's fears found groundless.

If you analyze it there are three kinds of transportation—transportation of people, transportation of property, and transportation of thought. The transportation of thought by the Western Union was on the same right of way and on lines parallel with the rails of the railroad lines used for the transportation of people and of property. The delivery is the same; the classification is the same. If you travel on a limited express you have to pay an extra price. If you send a banker's message you have to pay an extra price. If you send a package by express or by fast freight you have to pay an extra price. Ordinary passage and freight are the same as ordinary day messages. Cheap passage and coarse freight are the same as night messages.

But whatever you do you will be criticised. I have been connected with railroads since 1853, and I never yet made a tariff that some one

could not show me some rate in it that it would be better to change in all interests.

Give the railroads full freedom. If they quarrel among themselves let them fight it out within the principles of the law. If they fight over stable rates they will get over it. They can gain nothing. They must consider quality as an element as well as quantity in transportation. Make the law constitutional and make it short. When a man takes an employee into his service he gives him power and discretion. He does not supervise everything that the employee does; but if the employee does something the employer does not like, he disapproves of it and takes such measures as he thinks proper to see that it does not occur again.

Senator MILLARD. Your idea is that the present law should be repealed and begin again?

Mr. PORTER. Yes; entirely repeal the old laws and begin again. Make the new law constitutional. Give the railroads the power to make agreements, and give the Commission the authority to disapprove and stop the operation of any particular items in such agreements until the courts say what is right and what is wrong. This you can do under the Constitution. I do not know whether I have made myself understood, but I have tried to do so.

The CHAIRMAN. What you have stated is very much to the point. Is there anything else you want to state?

Mr. PORTER. I came here after the original law had been enacted, and had conversations with Judge Cooley, a very able man, the first chairman of the Interstate Commerce Commission, who came here full of hope and died disappointed because people would not do what he expected, without regard to their moneyed interest.

I think some one should be appointed on that Commission who has had experience in railroad transportation. The responsibility of disapproval of a railroad agreement being upon the Commission, the members of that Commission should have among them one who has had sufficient railroad experience to help the Commission judge whether the agreement is wise or not.

Senator FOSTER. Do you believe that the Elkins bill provides for pooling?

Mr. PORTER. I do not like the word pooling. But I believe that it is within the power of Congress to enact a law providing that rates shall be stable, and that is one of the most important elements. I have seen merchants ruined by over-buying goods in order to get them shipped at low rates, and later in consequence having to sell them at a sacrifice. The rates ought to be stable, and should be just between places and people. Of course there should be no favored shippers. It costs the railroad just as much to carry freights when the rates are cut as it does when they are carried at stable tariff rates. I would give to the railroads just the same freedom I would give to anyone—to make any kind of a legal agreement among themselves, and have that agreement enforceable.

Take the Wisconsin lumber trade when I operated there. The lumbermen used to pile the lumber at their mills. I used to go to them and say, "Let me haul it down to your yards in Kansas and Nebraska when I want to, and I will give you a 10 or 15 per cent lower tariff." Why did I do that? Because I could do that at a time when grain was going eastward very heavily, and if I took the lumber west-

ward it would save hauling empty cars one way. It was a commercial transaction. I would have made more money, the lumbermen could save money, and the consumer in Kansas and Nebraska would have had to pay no more for his lumber. I grant you that can not be done now. People could not understand it. But I saved thousands of miles of empty-car mileage in that way, and without that right it must cost railroads more to do transportation.

### STATEMENT OF HON. MARTIN A. KNAPP.

The CHAIRMAN. Do you want to make a statement this morning, Mr. Knapp?

Mr. KNAPP. I am entirely at the service of the committee.

The CHAIRMAN. The committee wanted to hear some of these other gentlemen on the automatic-coupler bill, but we will hear you now.

Mr. KNAPP. Mr. Chairman and gentlemen, it was my misfortune not to arrive here in time to hear Mr. Porter's entire statement, but I think perhaps I got the drift of it from his closing remarks. So much may be said upon the subject embraced in the pending bills that I hardly know where to begin or how, in a brief statement, to say anything which is likely to aid your consideration.

For ten years and more I have endeavored to make this question a subject of conscientious study, with the result of having some rather definite convictions. My observation and experience lead me to be very conservative. I certainly would not advocate any radical change in the existing laws, except in one respect, to which I shall presently allude, with your permission. Nor do I think it necessary to go further, for the present at least, than to give the regulating statute that degree of efficiency which it was supposed to have at the time of its passage.

The bill introduced by Senator Nelson, as you doubtless know, embraces, so far as it goes, some of the specific recommendations of the Commission. With reference to the subject-matter of that measure I need only say that it meets the approval, I think I am warranted in saying, of the entire Commission. I mean by that, as to its general aims and purposes. It has some minor provisions which I think of doubtful validity and which I should not be prepared to indorse.

The bill introduced by the chairman—a revised edition, if I may so characterize it, of which has been introduced in the House and is known there as the Wanger bill—apparently aims at the same purposes and is designed to accomplish substantially the same results as the Nelson bill by way of amending the law. It differs in form materially, however, because it is in form an independent measure, whereas the Nelson bill in form is an amendment of specific sections of the present act.

But the subjects which are in a way covered or treated by the Nelson bill and the corresponding provisions of the Elkins and the Wanger bills are not essentially dissimilar. While, as I said, there are some things in the Nelson bill which I am not prepared to indorse, there are some things also in the Elkins bill which I think might be modified to advantage, not in essential respects, but with reference to making its meaning more certain and relieving it from possible ambiguity, because we all concede that it is desirable in legislation to avoid the necessity of resorting to the courts for judicial interpretation, so far

as possible, and to enact such amendments as shall be plain, simple, and readily comprehended.

The two measures differ, however, in one very material respect.

The Elkins bill confers upon carriers, subject to the provisions of the act, rights of association and contract with each other, which rights existing laws deny.

The Nelson bill is entirely silent on that subject.

Speaking for myself, and not undertaking to voice the united opinion of the Commission, I am very much in favor of changing the law in that respect. My study of this question, Mr. Chairman, led me quite early to perceive the fundamental inconsistency between the aims and purposes of the "act to regulate commerce" and the prohibition of pooling contained in its fifth section. To my mind the idea that all rates shall be just and reasonable, that there shall be no discrimination between persons or localities—in other words, that the announced tariff shall furnish a standard of compensation binding upon the carriers and the public, and to be invariably observed in all cases—is a rule practically inconsistent with competitive relations. There can be no actual competition in railway rates, as the term "competition" is ordinarily understood, and at the same time an actual observance of published tariffs.

I think it is the misfortune of this law that a provision inconsistent with its general purpose was incorporated in it, and a still greater misfortune, because of its far wider application, was the so-called Sherman antitrust law, which the Supreme Court has said applies in all its provisions to railway operations. It might be, if we had the choice between large numbers of actually separate and independent railroads and the legalized association of those roads, that we should hesitate to confer a right of association which is now denied and which is contrary, in a general way, at least, to the trend of judicial utterance for more than two hundred years. But we have not any such choice, and I think the right of contracting, which the Elkins bill confers, could be defended, if upon no other ground, for the reason that it is desirable to preserve as much railway competition as you can.

So the practical choice, in my judgment, is between a degree of independence (the preservation of a considerable autonomy) and some check upon the tendency to railway combination—the choice between that and practically universal consolidation of our American railways—which shall eliminate their competition with each other.

You can not have continued competition that is legitimate, that is honest, of which everybody has the advantage; you can not have that without permitting the roads, by amendment of this law, to put some sanctioned restraint upon competition with each other; and I regard a measure which embodies that principle as not only in harmony with the aims and purposes of public regulation, but practically essential to the realization of those purposes.

The very obvious fact to my mind is that railway competition, whatever may have been its effects years ago in breaking down railway rates, has not in recent years, broadly speaking, had much influence in reducing published tariffs. That competition has found expression, and does find expression to-day, mainly in secret arrangements and preferential bargains by which the larger shippers profit.

It is very difficult for me to see where the ordinary man of affairs—the farmer, the crossroads country dealer, or the wage-earner of any

class or description—gets any benefit from the policy of railway competition which we have endeavored to enforce. Practically speaking, that policy has powerfully aided the great combinations of this country, because it has resulted in giving influential shippers of large tonnage an advantage which the smaller dealers have not been able to secure.

I think it not too much to say, Mr. Chairman, that the evils of present railway management and operation are mainly described by the single word "discrimination." That discrimination takes a twofold form. It may manifest itself in the secret rate by which a large shipper or combination of shippers gets a secret advantage, or it may manifest itself in such an adjustment of rates as between different localities and different articles of traffic as to prejudice the one and unduly favor the other. Those evils and both those forms of discrimination are mainly caused by what we call railroad competition. I am not optimistic enough to expect that those evils will be removed so long as the cause is perpetuated, but I think the time has come when we should recognize the origin of these evils and endeavor to get at the root of the difficulty and correct it from the bottom.

Therefore it seems to me that the amendments of this law which are most needful are those amendments which are most likely to secure the absolute preservation of tariff rates. I say that not only because of its abstract justice, and not only for the reasons I have already suggested, but for another reason, which to my mind is even more convincing, whatever may be said to the contrary—and I certainly express no opinion as to the merits of any particular case—and that is, that there are a great many complaints at the present time that rates are too high. Those complaints, I may say, are mainly, if not altogether, confined to the advances in rates affecting several hundred articles which were affected two years ago by a simple change in classification. Aside from those advances so brought about, nearly every complaint which has reached the Commission has, in its final analysis, resolved itself into a complaint of discrimination.

The most offensive and demoralizing of all evils connected with railroad operation is the giving of a rebate, and I think the first duty of Congress is to provide a legislative remedy against that evil. As I have already said, I think no remedy is adequate which does not include in its provisions the right of association and contract between railroads, which present laws forbid.

I say that for another reason. If it be true that tariff rates are in any case excessive, if it be true that in any community a commodity is burdened with an unjust transportation tax, I believe there is no influence so powerful to bring about a reduction of that burden as to compel everybody to share it equally. Just so long as the carrier, by yielding to the pressure of some great shipper or combination of shippers, by giving to some interest a private and preferential rate, can hold up its tariffs as to everybody else, it is perfectly natural that that should occur.

The carrier is aided to that result by its own interest and by the implied demand of the powerful shipper who gets the preferential rates. So if the question of the reasonableness of railway charges is a question between the public on one side and the carrier on the other, you have, under conditions of actual railway competition—conditions which are enforced by our present legislative policy—you have a divi-

sion of the public, its most powerful members in a particular locality being ranged on the side of the carrier; and just so long as the interest on one side is divided and the powerful shipper is allied with the carrier, just so long it is natural, if not inevitable, that the tariff rates will be disregarded and the great majority of men be required to pay a high rate and their more important and influential rival allowed a lower rate. I believe there is no influence which will be so powerful, no authority which you can confer upon the Commission which will be so effective, to bring down rates which are too high as to compel the absolute observance of tariff rates under all circumstances and to all shippers.

For when it comes to pass that an Armour or a Havemeyer or a Counselman can not get a carload of freight carried for one mill less than the weakest and least consequential competitor, then you will have the entire influence of large shippers and small concentrated in an effort to bring about a reduction of rates, and that effort will ordinarily succeed, because, as a general proposition, I do not believe that any railroad or combination of railroads can long maintain a rate which is demonstrably excessive or unreasonable against the united demands and the united insistence of the community or the dealers in the commodity to which those rates apply. Therefore I believe that the most wholesome and powerful agency which can be introduced to bring about the purposes for which this law was enacted is that which shall secure to every shipper, large and small, precisely the same charge; and that, as I have already said, I do not believe, as a practical matter, can be accomplished without allowing the railroads the right of association with each other.

The CHAIRMAN. We shall be pleased, Judge Knapp, if you will continue these remarks at our next meeting.

Mr. KNAPP. That, Mr. Chairman, covers all I want to say.

COMMITTEE ON INTERSTATE COMMERCE,  
*United States Senate, June 6, 1902.*

At the regular weekly meeting of the committee (present, Senators Elkins (chairman), Kean, Dolliver, Millard, Foster, Carmack, and McLaurin), Mr. Joseph Nimmo, jr., made a statement on the bills before the committee to amend the interstate-commerce act as follows:

**STATEMENT OF JOSEPH NIMMO, JR.**

THE CIVIL REMEDY PROVIDED BY SECTION 16 OF THE ACT TO  
REGULATE COMMERCE.

Mr. NIMMO. Mr. Chairman, since bills were introduced in both branches of Congress at its present session for the amendment of the act to regulate commerce, the whole situation has been changed by judicial procedure instituted by the Interstate Commerce Commission at Chicago. After fifteen years of efforts by the Commission to enforce the criminal provisions of sections 10 and 12 of the act to regulate commerce, recourse was had during the month of March last to the civil remedy provided in section 16 of that act. It is yet too soon to predict what may come of the attempt to enforce this provision of the statute. The only information of value upon the subject is contained

in the remarks of Judge Grosscup just before issuing his order for a temporary injunction on March 24 last. The language of the learned judge upon that occasion is as follows:

The question presented by this application is a new one and a very great one, and I will not pass upon it finally until there have been elaborate arguments on each side. If the United States courts sitting in equity have the power called for, it will make them master of the whole rate situation, for an inquiry instituted by them to inquire whether the injunction has been violated or not will, much more readily than criminal proceedings, probe to the bottom of the railroad's doings. For my own part, I believe that railroad rates ought to be as stable as postage rates, so that every shipper would know, as certainly as the sender of a letter, how much it would cost him, and the fact that no one else could send it for less. An injunction something like this has been granted in other cases, notably in the Debs case, but an important distinction between that case and this is that in the Debs case the things complained of were in their nature temporary, while in this case the injunction will be against conduct running continuously into the future. The interstate-commerce act has hitherto been ineffectively executed, but the taking of such power by the courts, as this injunction implies, might turn out to be the vitalizing of the act.

This is a mere forecast by Judge Grosscup, but it contains a word of hopefulness. It tells the important fact that the appeal of the Commission to section 16 is a new one—so new indeed that the court will require elaborate argument of the question on both sides before deciding it. It declares further that if the courts have the power called for “it will make them master of the whole rate situation.” It next states the opinion of the learned judge that the new or civil process “will much more readily than criminal proceedings probe to the bottom of the railroad's doings,” that “the injunction will be against conduct running continuously into the future” and thus exercise a deterrent influence, the finest expression of governmental power, and that while criminal procedure has proved ineffectual, the taking of power under section 16 “might prove to be the vitalizing of the act.”

This, Mr. Chairman, is the opinion of a learned and astute judge concerning a possible remedy for the specific difficulties which have been made the occasion for the introduction of the various bills now before Congress for the amendment of the act to regulate commerce. So the fact appears at this late day that the interstate-commerce act has two arms—the right arm of civil remedy and the left arm of criminal remedy. Hitherto the interstate commerce has confined its attempts at regulation to the left arm of criminal remedy, but it has at last had recourse to the right arm of civil remedy provided in section 16 of the act. After waiting fifteen years to inaugurate such action, why not, I ask, postpone legislation upon the subject until it can be ascertained what will become of this injunction proceeding, which, as Judge Gresham observes, is not only promising of good results with respect to rate cutting, but also to the whole broad subject of railroad regulation. The motion was set down for hearing on June 9, but I think it has been postponed to a later date in order that similar procedure before a United States judge at Kansas City may be taken under consideration at the same time.

There is another matter which I would refer to, and that is that section 3 of the Corliss bill proposes to take the vital principle out of this vitalizing section 16 of the act. I need not attempt to explain the phraseology which makes this change, for it is evident upon the reading of the act and of the bill, but will simply say that the bill proposes to repeal all of section 16 on pages 15 and 16 of the act to regulate commerce, as printed, and to substitute in lieu thereof obedience to defini-

tive orders of the Commission with respect to prescribing rates for the future, a matter which has no place in the law as it stands. In the opinion of an able lawyer "it would seem to have the effect of establishing the Commission as the sole tribunal to deal with the subject and ousting the courts of their important jurisdiction." For this reason above all others, I would say postpone action on this Corliss bill or any other bill involving an attempt to paralyze section 16 of the act to regulate commerce, at least until after the courts have had a chance to decide upon its efficacy for the abatement of the evils on account of which it has been invoked.

#### STATEMENT OF THE QUESTION AT ISSUE.

I invite your attention next to the various attempts of the Interstate Commerce Commission to acquire both judicial and legislative power.

1. The Commission at first assumed that it was invested with dispensing power in the matter of granting relief from the provisions of section 4, the long and short haul provision, but it was soon overwhelmed with applications for relief and reversed its policy, declaring that the companies must first decide for themselves whether they are or are not authorized by the law to charge more for the shorter than for the longer haul, and that in case of complaint the Commission would hear and determine each case upon its merits. The latter method of procedure has been found to be entirely adequate to the prevention of unjust discriminations of this particular character. It is the legal method of procedure in regard to controversies in contradistinction to the American and autocratic method of exercising dispensing powers not subject to judicial review.

2. The Commission having assumed to exercise the judicial function in the case of the Kentucky and Indiana Bridge Company *v.* Louisville and Nashville Railroad Company, Judge Jackson, in the United States circuit court for the district of Kentucky, decided in the month of January, 1889, that the Commission is not a court, and that Congress has no power to invest an administrative body with the judicial function. (37 Fed. Rep., 613.)

In its annual report submitted November 29, 1890, the Commission denied the doctrine of constitutional law announced by the court and stoutly maintained that with respect to administrative questions its "conclusions should be a finality even though their enforcement might require judicial aid." (4. I. C. C. R., p. 13.)

A bill expressive of its peculiar ideas was then drawn by the Commission, and at its instance was introduced in the Senate on December 15, 1891. (Senate bill 892, Fifty-second Congress, first session.) At hearings before the Senate Committee on Interstate Commerce from February 3 to February 24, 1892, the proposition was strenuously opposed by eminent counsel, mainly upon the elementary principle of constitutional law and of rational government that it is absurd to attempt to invest a single governmental agency with the functions of detective, witness, party complainant, prosecutor, and judge in the same proceeding. That savored too much of the Pooh Bah style of government.

The attempt of the Commission to secure the desired power was disregarded by the Senate Committee on Interstate Commerce before which the hearings took place.



3. In the maximum-rate case the Commission assumed, by an order dated May 29, 1894, that by necessary implication the act to regulate commerce conferred upon it the power to prescribe the relation of the rates which should prevail as between points north of the Ohio River and points in the South Atlantic and Gulf States with reference to rates from points in the North Atlantic States to the same southern points. The result of this order of the Commission, if it had been allowed to take effect, would have been to endow the Commission with absolute control not only over the transportation interests but also of the commercial interests of the country, thereby eliminating the courts from any power to restrain the action of the Commission in the issuance of such orders. But the Supreme Court of the United States in its decision rendered May 27, 1897 (167 U. S.), overruled the order of the Commission. At every subsequent Congress, however, the Commission has been a somewhat importunate claimant before Congress for the powers which the Supreme Court of the United States declared were not conferred upon it by the act to regulate commerce.

Furthermore, the Supreme Court ruled, in the maximum-rate case, that if such power over rates as that claimed by the Commission were conferred upon it by Congress it would be in the nature of a delegation of legislative power, and as such be exempt from all judicial control or modification, and therefore constitute practically a grant of absolute or autocratic power.

This conclusion of the Supreme Court of the United States was also strenuously denied by the Commission, and ever since the Commission and its coadjutors have been strenuously engaged in the attempt to secure the power to prescribe absolute and relative rates for the future. The present contention before the two committees of Congress grows out of this struggle for power.

#### THE JUDICIAL VIEW OF THE PROPOSITION TO GRANT TO THE COMMISSION THE RIGHT TO PRESCRIBE RATES FOR THE FUTURE.

In the course of the controversies upon the general question of granting to the Commission the power to prescribe rates for the future, the advocates of the measure have had much to say to the effect that such power if granted would be subject to judicial review. This is strenuously denied. The question being vital to the whole subject of governmental regulation of the railroads, it seems proper to consider it upon its merits.

The Supreme Court of the United States, in the maximum-rate case, already cited, announced the following rule of constitutional law:

It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged for the future—that is a legislative act.

And again:

The power to prescribe a tariff of rates for carriage by a common carrier is a legislative and not an administrative or judicial function. (167 U. S., 479.)

In a word, the Supreme Court has declared that it will have nothing to do with a rate for the future made under legislative authority. The business of the judiciary relates to legally contested cases. Its normal expression is the lawsuit—not the administration of the affairs of the busy world. It looks to the past and not to the present or the

future. This constitutional view was accepted and has been clearly expressed by members of the Interstate Commerce Commission.

In commenting upon these and related judicial utterances, Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, made the following statement on March 10, 1898, before the Senate Committee on Interstate Commerce (page 9):

One doctrine is now settled—that whereas the investigation of the question whether an existing rate is a reasonable and lawful one or not is a judicial question, the determination of what the rate shall be in the future is a legislative or administrative question with which the courts can have nothing to do.

Again, on page 26 of the same hearing, Mr. Knapp said:

This is the theory of it: This Commission, for the purpose we are now discussing, represents the Congress of the United States, and when it has made an order, in a certain sense it is like an act of Congress.

On page 118 of Hearings before the Committee on Interstate Commerce of the United States Senate, February 20, 1900, Hon. Charles A. Prouty, Interstate Commerce Commissioner, also an attorney at law, said:

The prescribing of a rate is, under the decisions of the Supreme Court, a legislative, not a judicial function, and for that reason the courts could not, even if Congress so elected, be invested with that authority.

At a recent hearing in another place Mr. Knapp said, on page 296:

While the determination whether a given rate is—that is, has been—reasonable or not, is a judicial question, the determination of the rate to be substituted in the future is not a judicial question, can not be made a judicial question, and that authority, if exercised at all under the circumstances, must be exercised either by the legislative body itself or by an administrative tribunal to which some portion of the legislative power is delegated. Now, that being so, of course you must bear this in mind, that it is incorrect and misleading to speak of an appeal from the order of the Commission.

In the recent case of *Louisville and Nashville Railroad Company v. Kentucky*, decided January 6, 1902, the Supreme Court said:

It is scarcely necessary to say that courts do not sit in judgment upon the wisdom of legislative or constitutional enactments.

In the case of *San Diego Land Company v. National City*, the Supreme Court of the United States held as follows (174 U. S., 739-754):

Judicial interference should never occur unless the case presents clearly and beyond all doubt such a flagrant attack upon the rights of property under the guise of regulation as to necessarily have the effect to deny just compensation for private property taken for public use.

Similar judicial opinions are abundant and need not be cited here.

An exceedingly able and distinguished lawyer, who has given practically his entire time to the study of transportation questions since the act to regulate Congress was passed, has recently expressed the following opinion upon this vitally important point:

As the power to make future rates is a legislative power, Congress can not, in my opinion, constitutionally confer upon the judicial department any power to review or reverse the action of the Commission in making future rates. The only power that would be left to the judiciary or that could be conferred upon the judiciary by Congress would be the power to decide whether those rates (made by the Commission) were confiscatory in character.

And again:

No court can determine whether an act of Congress is upon the facts unjust or unreasonable or whether an act has been passed under some error of law.

While it is unquestioned constitutional law that no carrier can be compelled to carry freights at rates which are in effect confiscatory, yet a broad line of distinction lies between remunerative and confiscatory rates, which in practice excludes the courts from the power to condemn any rate made in pursuance of legislative enactment upon the ground that it is unjust or unreasonable. Without doubt the discretionary power proposed embraces the entire range of commercial profits which in practice justifies both the construction and the operation of railroads. In a word, it is an absolute and practically autocratic power.

The idea that the Federal judiciary will ever allow itself to be used for the purpose of eliminating its own authority in the realm of justice seems too preposterous for serious consideration. It can be safely predicted that in reply to any such proposition the judiciary would again be forced to the indignant exclamation, "Could anything be more absurd?"

I think, Mr. Chairman, that certain members of the Interstate Commerce Commission are fully aware of the import of the bill now before you as I have stated it, namely, that it eliminates the judiciary and confers upon the Commission practically autocratic powers, and have been forced to the conclusion that it is impracticable. In an address delivered before the Illinois Manufacturers' Association on April 2, 1902, Mr. Commissioner Prouty said:

Personally I have for a long time insisted that these questions could only be properly dealt with by the creation of a new and special tribunal for that purpose.

And on page 238 of the hearings, in another place, Mr. Prouty said on April 22:

I think if you could create a special court which dealt with these questions alone, which was chargeable in the public mind with the proper disposition of these questions, and which would speedily become an expert body, you would solve that difficulty.

Governor Fifer, also an Interstate Commerce Commissioner, indicated the same purpose, and pointed to the deterrent influence of judicial procedure, an expression of governmental authority which does not attach to mere administrative authority. The same idea was expressed to me several years ago by another member of the Commission.

In a word, too, the Commission appear already to see the absurdity involved in the autocratic control of the commercial and transportation interests of this country freed from all judicial restraint.

There is no intimation of any such grant of power in the act to regulate commerce. This was emphatically declared by the Supreme Court of the United States in the Maximum Rate Case (167 U. S.) and the fact that ample remedy for all the evils complained of is afforded by section 16 of the interstate-commerce act is indicated by Judge Grosscup in his recent judicial utterance at Chicago.

#### MERITS OF THE QUESTION INVOLVED.

And now I come to the merits of the whole contention, namely, the question as to whether the grounds of complaint are of such a character and are sufficient in importance to justify the action proposed in the Corliss bill. The question at issue relates to three causes of complaint, namely: (1) Discriminating rates; (2) exorbitant rates, and (3) violations of published or legal rates.

First I invite your attention to the subject of

#### DISCRIMINATING RATES.

On April 16, 1900, Senator Elkins, then a member, and now chairman, of this committee, introduced in the Senate a resolution calling upon the Commission for the following information:

The total number of cases heard and determined by the Commission during the last ten years, the number of such cases which have been appealed to the courts, the number of such cases in which the decisions of the Commission have been sustained, the number of such cases in which the decisions of the Commission have been reversed, and the number of such cases which have not been determined.

This resolution was at once considered and agreed to. It is known as Senate resolution No. 267, Fifty-sixth Congress, first session. On the 28th of April the Interstate Commerce Commission transmitted its reply to the Senate (Senate Doc. No. 319, Fifty-sixth Congress, first session). From this answer the history of the cases decided from April 16, 1890, to April 16, 1900, appeared to have been, summarily, as follows:

Total number of cases decided by the Commission.....	180
Number appealed to the courts.....	35

This showed that in the millions of freight transactions in the United States during the ten years from April 16, 1890, to April 16, 1900, only 180 cases, or 18 a year, came to a hearing, and that of these only 35, or 3½ a year, were appealed to the courts, of which in only 4 cases in ten years was the Commission sustained by the courts.

The 35 cases appealed to the courts during the ten years were disposed of as follows:

Commission sustained.....	4
Commission reversed.....	17
Cases pending.....	12
Cases withdrawn.....	2
Total.....	35

The above result showed that of the 21 cases appealed from the decision of the Commission to the courts and decided, the Commission was overruled in over four-fifths of those cases. This, in connection with the fact as to the small amount of litigation involved, was exceedingly detrimental to the claim of the Commission.

The bill (S. 1439, Fifty-sixth Congress, first session) was reported adversely from the Senate Committee on Interstate Commerce and failed of consideration in the Senate.

In its last annual report the Commission says, "The great mass of complaints are handled and disposed of by the Commission by preliminary investigation and correspondence. The total number of proceedings brought before the Commission during the year were 340, but only 19 formal proceedings were instituted before the Commission, or only one in 18 of the complaints preferred. There were only ten cases decided by the Commission during the year, or one in 34 of the complaints entertained. Of the ten cases decided seven were cases of unjust discrimination. This admirable result indicates the high degree of perfection to which the railroad system of the country has attained. It is also creditable to the act to regulate commerce and to its administration.

In an argument which I had the honor to make before the Senate Committee on Interstate Commerce on April 3, 1894, I was able to present the following statement:

In the exercise of its function of preventing unjust discriminations and exorbitant charges the work of the Interstate Commerce Commission has been crowned with abundant success. Although several hundred complaints as to alleged violations of the act to regulate commerce were made during the year ending December 1, 1893, only sixteen cases came to a formal consideration and hearing, all the rest having been settled by the mediatorial offices of the Commission. In only one of the cases decided was the reasonableness of rates called in question, and in that single instance the claim was decided to be not well founded. One of the Commissioners has informed me that only about two-thirds of the cases decided sustain the charges preferred. This indicates that the actual number of proven cases of unjust discrimination did not exceed eleven and constitutes a most gratifying proof of the success of this nonjudicial tribunal in the exercise of its appointed function. Mr. Chairman, I venture the assertion that no court in this country inferior to the Supreme Court of the United States has had so few cases appealed from its decision in a single year.

All this proves beyond question that unjust discriminations and preferences of all sorts have been reduced to a minimum, and that they furnish no reason whatever in justification of the appeal of the Commission for more power. This the Commission practically concedes. Accordingly it has abandoned unjust discriminations in rates as a basis for its demand for autocratic powers, and now bases such claims almost, if not exclusively, upon rate cutting.

#### EXORBITANT RATES.

In its seventh annual report, submitted December 1, 1893, the Commission said at page 12: "To-day extortionate charges are seldom the subject of complaint." In its twelfth annual report, submitted January 9, 1899, at page 27, the Commission said: "It is true, as often asserted, that comparatively few of our railway rates are unreasonable." From time to time the Commission has had quite a good deal to say about "unreasonably low rates."

In its last annual report the Interstate Commerce Commission stated that "the total number of proceedings brought before the Commission during the year was 340. These include formal as well as informal complaints. But only ten decisions were rendered by the Commission during the year, all of which were on formal complaints. Of these, however, only two involved unreasonable or exorbitant rates, or one in 170 complaints.

On March 18, 1898, Hon. Martin A. Knapp, the present chairman of the Interstate Commerce Commission, stated before the Senate Committee on Interstate Commerce that "the question of excessive rates—that is to say, railroad charges—which in and of themselves are extortionate, is pretty much an obsolete question."

The Supreme Court has in no case decided that a rate charged was in itself exorbitant, and I think I am not mistaken in saying that the question as to the reasonableness of any rate per se has never been presented to that court. I think also that I am not in error in stating that no rate has ever yet been proven to be unreasonable in the lower Federal courts.

The record of constantly reduced freight charges in this country since the year 1870, as published by the Interstate Commerce Commission and by the Bureau of Statistics of the Treasury Department, affords overwhelming proof not only of the fact that rates are not

excessive, but also that they are very low. During the last thirty years rates have steadily declined in every section of the country. This is shown on page 397 of the Statistical Abstracts for 1901 as follows:

*The average receipts per ton per mile on railroads of the United States during the years 1870, 1890, and 1900.*

Railroad lines.	1870.	1890.	1900.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cent.</i>
Lines east of Chicago.....	1.61	0.63	0.55
Western and Northwestern lines.....	2.61	1	.89
Southwestern lines.....	2.95	1.11	.91
Southern lines.....	2.39	.80	.63
Transcontinental lines.....	4.50	1.50	.93
Average.....	1.99	.91	.70

The average charge per ton per mile for the United States fell from 1.99 cents in 1870 to 0.70 cent, or 7 mills per ton per mile in 1900. This shows that the average rate in 1900 was only a little more than one-third of the average rate in 1870—thirty years ago.

At the same time the facilities for railroad transportation have been enormously increased and wonderfully improved. The service during the year 1900 was very much more efficient than in 1870.

The following table compiled from the data of the Interstate Commerce Commission for the years 1890 and 1900 indicates the fall in rates by groups and for the whole country. It closely verifies the statement made by the Bureau of Statistics:

*Revenue per ton per mile charged by railroads of the United States according to statistics of the Interstate Commerce Commission.*

[Data from page 72 of report for 1890 and from page 95 of the report of the Commission for 1900.]

	1890.	1900.	Reduction.
	<i>Cents.</i>	<i>Cents.</i>	<i>Per cent.</i>
Group I.....	1.373	1.152	16
II.....	.828	.613	26
III.....	.695	.546	21
IV.....	.844	.595	29
V.....	1.061	.808	24
VI.....	.961	.806	16
VII.....	1.360	1.064	22
VIII.....	1.152	.964	16
IX.....	1.303	.938	28
X.....	1.651	1.067	35
United States.....	.941	.729	22½

The facts thus stated prove beyond all doubt that in all our splendid American railroad system embracing about 200,000 miles of road, over which moves about \$25,000,000,000 worth of merchandise annually or more than twice the value of the entire railroad system of the country, and involving millions of transactions every year, only 3½ cases a year of unjust discriminations were proven in formal hearings before the Commission during the ten years from April 16, 1890, to April 16, 1900, a fact stated by the Interstate Commerce Commission in Senate Document No. 319 of the Fifty-sixth Congress, first session. Of this small number less than one case a year of unjust discrimina-

tions was sustained by the courts. Furthermore, not a single case of unreasonable or exorbitant rates has been sustained by the Federal courts during the fifteen years since the Interstate Commerce Commission was organized.

Mr. Commissioner Knapp has attempted to overcome the effect of the foregoing official record showing the general and very marked reduction in rates by asserting that the apparent reduction in rates is the result of a disproportionate increase in the quantity of low-grade freights, such as iron ore and coal transported during the last ten years. This statement is without any foundation in fact, the tonnage of merchandise transported other than coal and iron ore having increased faster from 1890 to 1900 than did the tonnage of coal and iron ore transported. But this assumption has no foundation whatever in the facts of experience. This is clearly indicated by the following table, which shows the tons carried 1 mile on railroads, the tons of coal marketed, and the tons of iron ore produced in the United States in 1890 and in 1900:

	1890.	1900.	Increase.
	<i>Tons.</i>	<i>Tons.</i>	<i>Per cent.</i>
Tons carried one mile <sup>a</sup> .....	76,207,047,298	141,599,157,270	0.86
Coal marketed <sup>b</sup> .....	114,623,266	199,977,758	.74
Iron ore produced <sup>c</sup> .....	16,036,043	27,553,161	.....

<sup>a</sup> Interstate Commerce Commission statistics.

<sup>b</sup> Statistical Abstract of the United States.

<sup>c</sup> Mineral Resources of the United States, 1900, Geological Survey, pp. 43-44.

From this table it appears that the increase of railroad traffic, as expressed by tons of freight carried 1 mile, according to the statistics published by the Interstate Commerce Commission, exhibited an increase of 86 per cent during the ten years 1890 to 1900, whereas the coal marketed and iron ore produced in the United States during the same period showed together an increase of only 74 per cent, so that the attempted argument that the apparent reduction in the average rate per ton per mile during the ten years from 1890 to 1900 is due to the enormous increase in the tonnage of coal and ores transported is seen to be utterly fallacious.

The contention that rates have not been greatly reduced during the last ten years is as glaringly untrue in detail as in the general expression already given for the whole country. For example, the tons of freight transported 1 ton a mile over the lines embraced in Group II of the Interstate Commerce Commission's subdivision, including the States of New York, New Jersey, Pennsylvania, Maryland, and Delaware, increased from 23,236,827,478 in 1890 to 41,275,547,319 in 1900, an increase of 77.63 per cent, while the coal produced in the States of Pennsylvania, Maryland and West Virginia exhibited during the same period of ten years an increase of only 65 per cent, viz, from 88,860,072 tons in 1890 to 146,323,336 tons in 1900.

It also appears from the statistics of the Interstate Commerce Commission that the average rate charged on the lines of Group II fell from 0.828 of a cent in 1890, to 0.613 of a cent in 1900, a reduction of 26 per cent, thus clearly indicating a large and important reduction in the rates charged on the four leading trunk lines of the East—the New York Central, the Erie, the Pennsylvania, and the Baltimore and Ohio, together with their branches and connections in Group II.

## SECRET VIOLATIONS OF RATES.

And now, Mr. Chairman, I come to the ground upon which, at the present time, the Commission bases its demands for practically autocratic power over the commercial and transportation interests of this country.

## SECRET VIOLATIONS OF PUBLISHING RATES.

Having been forced to abandon all other reasons for its persistent claim to autocratic power, the Commission has had recourse to secret rate cutting as the gravamen of its complaint. Here again facts are against the Commission. (1) It has steadfastly denied that it is in any especial manner responsible for the prevention of rate cutting. (2) It has opposed any amendment to the act to regulate commerce designed to afford to the Commission greater facility for the enforcement of the penal provisions of the statute. (3) It has been derelict in the discharge of its duties with respect to the prevention of rate cutting. (4) The remedy proposed by the Commission is not applicable to the cure of the evil complained of, and (5) The remedy proposed by the Commission is misdirected. These points will be considered in the order stated.

THE COMMISSION HAS STRENUOUSLY MAINTAINED THAT IT IS NOT RESPONSIBLE FOR THE PREVENTION OF RATE CUTTING.

By the second section of the act to regulate commerce every departure from tariff rates is expressly forbidden and is declared to be illegal. By section 6 it is provided that in order to compel every common carrier to publish and file with the Commission its tariff rates, fares, and charges the "writ of mandamus shall issue in the name of the people of the United States at the relation of the Commissioners," and section 12 provides that "the Commission is hereby authorized and required to execute and enforce the provisions of this act;" for which purpose the Commission is given the widest possible powers of investigation, including the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, contracts, and agreements and documents relating to any matter under investigation. The law distinctly provides that it may by one or more of its members prosecute any inquiry necessary to the discharge of its duties in any part of the United States. It has also the power to require every district attorney in the United States to prosecute all necessary proceedings for the punishment of violations of the act, and its findings in all judicial proceedings are made *prima facie* evidence as to each and every fact found.

Furthermore, it is provided by section 16 of the act to regulate commerce that if it is made to appear to any United States court "that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said commission and enjoining obedience to the same."

Notwithstanding these clearly-prescribed powers and duties, the Commission has, from the beginning, sought to repel the idea that by



the act to regulate commerce it is especially charged with the duty of enforcing the provisions of the act against secret rate cutting—the paramount purpose of the act. In proof of the correctness of this assertion the following facts of record are adduced:

In its annual report to Congress for the year 1893, at page 7, the Commission declared that it “is wholly without authority as respects those discriminations between individuals which are made misdemeanors by that enactment,” that “it is endowed with none of the functions pertaining to the detection and punishment of delinquents except such functions as may be exercised by private citizens,” and (on page 8) it deprecated the idea that it has anything to do with “uncovering the guilty transaction and bringing to justice those who engage in it.”

In a letter addressed to Hon. William E. Chandler, a Senator of the United States from New Hampshire, under date of October 17, 1895, Hon. Martin A. Knapp, then an Interstate Commerce Commissioner and now chairman of the Commission, strenuously maintained that the prevention of the crime of rate cutting is a thing “with which the Commission has no power to deal.” (Senate Doc. 39, Fifty-fourth Congress, first session, p. 14.)

For this and other declarations of similar import Senator Chandler administered to Mr. Knapp and to the Commission a sharp rebuke.

Mr. Knapp appears to have been then, as he has been ever since, laboring under the delusion that the duty of preventing rate cutting and other penal offenses denounced by the act to regulate commerce is incompatible with and beneath the function of revising all the freight tariff of the country, of prescribing rates for the future, and of determining the relative advantages to be enjoyed by competing towns, cities, and sections, and by competing industries throughout this vast country, a conception which he described in his letter to Senator Chandler as “my high ideal of the work in which the Commission is engaged,” an idea which as I have endeavored to show is expressive of a malignant form of bureaucratic government, and as such utterly inconsistent with the governmental institutions of this country.

In its persistent denial of the fact that it is explicitly charged by the act to regulate commerce with the duty of preventing rate cutting the Commission flatly opposes its opinion to that of the Supreme Court of the United States. In the Maximum Rate Case (167 U. S., 479) the court said:

“It (the Commission) is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one against another; that no undue preferences are given to one place or places or individual or classes of individuals, but that in all things that equality of right, which is the great purpose of the interstate-commerce act, shall be secured to all shippers.”

But, as before stated, in this as in other respects the Commission has not and does not to-day hesitate to oppose its opinion to that of the Supreme Court of the United States regarding the interpretation of the statutory or constitutional law of the land.

THE COMMISSION HAS REPELLED ANY ATTEMPT TO GIVE IT GREATER POWER IN ENFORCING THE PENAL PROVISIONS OF THE ACT TO REGULATE COMMERCE.

Not content with a denial of its duty to prevent rate cutting the Commission has deprecated the idea of increasing its power to prevent

the commission of misdemeanors, particular reference being had to rate cutting. On page 7 of the seventh annual report of the Commission is found the following declaration:

But the main point to be considered is that Congress has no power to clothe the Commission, or any similar tribunal, with authority to execute the penal provisions of this statute other than to aid prosecuting officers in procuring evidence against suspected parties.

And, again, at page 8:

No amendment of this statute, therefore, is necessary or suitable with the view of giving greater power to the Commission in enforcing its penal provisions.

But when driven from the charges of exorbitant rates and unjustly discriminating rates, as possible excuses for demanding of Congress autocratic power, the Commission glaringly stultifies itself by seeking to secure amendment to the act to regulate commerce for the purpose of preventing rate cutting through an expedient which, as herein shown, is not only out of all proportion to but totally inapplicable to the offense, besides being essentially revolutionary.

The repudiation by the Commission of responsibility for the prevention of rate cutting, and its simultaneous effort to prevent any strengthening of its powers for that purpose, which would be subject to judicial review, clearly indicates its fixed purpose and desire to free itself of any sort of cooperation with or dependence upon the judiciary in the discharge of its official function.

THE COMMISSION HAS BEEN DERELICT IN THE DISCHARGE OF ITS DUTY WITH RESPECT TO THE PREVENTION OF RATE CUTTING.

The Commission has neglected the duty of using its best efforts to aid in detecting and in bringing to punishment persons who have been guilty of the offense of rate cutting and other misdemeanors, a duty plainly incumbent upon it under the provisions of sections 2, 6, 10, 12, and 16 of the act to regulate commerce. This seems to be the result of the extreme aversion entertained by the Commission toward that class of duties.

In the fifteenth annual report of the Commission, submitted January 17, 1902, at page 8, appears the following:

To convict for unjust discrimination it is necessary to show not merely that the railway company paid a rebate to a particular shipper, but it must also be shown that it did not pay the same rebate to some other shipper with respect to the same kind of traffic moving at the same time under similar conditions. As a practical matter this is almost always impossible.

The rule of law here stated by the Commission was announced by Judge Grosscup, of the northern district of Illinois, in a decision rendered June 20, 1896, in the case of *United States v. Hawley*, 71 Fed. Rep., 672, with which case the Commission had nothing to do. It is as follows:

This case illustrates that whatever difficulties there are in the enforcement of this act are not so much due to the law itself as to the failure of the prosecution to gather up and lay before the grand jury the essential facts of a case. The facts difficult to obtain—the transaction between the carrier and the favored shipper—are fully spread upon this indictment. The facts not difficult to obtain—the identity of the shipper discriminated against—constitute the fatal omission. Ordinary alertness and intelligence would have avoided this pitfall.

Herein the court declared that the facts as to the identity of the shipper discriminated against are “not difficult to obtain” and sharply

animadverted upon the failure to obtain them, whereas the Commission in its annual report dated January 17, 1902, has declared that the discovery of such facts "is almost always impossible."

In this the Commission flatly opposes its opinion to that of the judiciary and of every freight-traffic manager in the country. I mention this contrariety of opinion upon a matter easily susceptible of proof as one worthy of Congressional inquiry.

The judicial opinion just cited relates particularly to the offense of unjust discrimination. But in the same case the court stated the fact that it is a violation of the law to charge less than the tariff rate. Even this offense, not involving any charge of unjust discrimination, the Commission seeks to ignore, declaring that the law "does not punish (it) otherwise than by a possible nominal fine." The law, however, explicitly prescribes for this particular offense a fine of "not to exceed \$5,000."

The declaration of the Commission that the act to regulate commerce does not confer upon it ample power to prevent rate cutting is strenuously denied by able lawyers and jurists who hold that sections 2, 6, 10, 12, and 16 of the act gives it ample power to correct and prevent such offenses. If, however, the law is in this respect defective, by all means let it be amended so that the procedure may be freed from any practical difficulty.

Differences of opinion prevail as to the nature of the remedy which should be adopted for the prevention of rate cutting. In its fifteenth annual report, submitted January 17, 1902, the Commission suggests as a remedy for rate cutting that the corporation as well as its officers should be subject to the penalty prescribed in the act. The general solicitor of one of the great trunk lines of the country suggests that the corporation alone ought to be subject to the penalty. The question is one to be determined by Congress and is worthy of careful consideration.

It is believed that any proper amendment to the act in regard to rate cutting would be cheerfully accepted by the principal railroad managers of the country, and that they would cordially cooperate in the enforcement of the law. The public attitude assumed by the leading railroad officials of the country toward this subject seem fully to sanction this statement.

In this connection it is worthy of observation that the Commission fails to show in how many cases it has given the courts a chance to consider rate cutting upon evidence which the court declares not difficult to obtain, or to adduce evidence upon which the courts may impose what the Commission calls "a possible nominal fine," but which may amount to \$5,000, and which with ordinary diligence can be imposed.

It is believed that if the Commission had been half as earnest in the attempt to prevent rate cutting as it had been in its efforts to secure autocratic power, the misdemeanor complained of would now be very much less the subject of complaint. It is believed also that a thorough Congressional investigation of this particular subject would clearly expose a manifest dereliction of duty on the part of the Commission.

The history of the case exposes the aversion of the Commission to a duty clearly imposed upon it by the interstate-commerce act, and this is exhibited nowhere so glaringly as in the oft-repeated assertion of the Commission that it has been deprived of the power to afford relief to complainants against wrongs incident to infractions of the law, and that it is not responsible for the prosecution of specific violations of the

provisions of the act to regulate commerce, both of which statements are strenuously denied.

A recent news item indicates that at last the Commission has awakened to a realization of the fact that the law imposes upon it a duty with respect to the suppression of rate cutting, and that it is disposed to try to set in motion the means for accomplishing that object before the courts as provided in the act to regulate commerce.

THE REMEDY PROPOSED BY THE COMMISSION IS NOT APPLICABLE TO THE CURE OF THE EVIL COMPLAINED OF.

The plan of conferring upon the Commission the power to prescribe rates is totally inapplicable to the offense of rate cutting. It has no relation to such offenses as of means to an end. The Commission has never sought to show that it has such relation. There is not the slightest reason to believe that rates made by the Commission would be any more exempt from rate cutting than are rates made by the companies. The true remedy pointed out by the judiciary and by the lessons of experience lies in a faithful enforcement of existing laws, which the Commission has spurned and neglected to enforce. Such laws, however, may be amended or supplemented by others which would facilitate the administrative work of the Commission, for the question is one of procedure, and not one as to the power to act.

The history of the course pursued by the Commission in this matter clearly indicates that the idea of asking Congress for autocratic power over the commercial, industrial, and transportation interests of this country in order to suppress rate cutting is an afterthought. Rate cutting is now brought to the front apparently from the fact that the Commission sees no other means of advancing its claim to the exercise of autocratic power either in exorbitant rates or in unjustly discriminating published rates.

Secret violations of published rates have their origin in the competition of rival commercial forces and are expressions of such struggles. This is apparent to merchants and to railroad managers throughout the country, and as such is deprecated by them. The fact is also clearly perceived that the remedy for such evils lies primarily in railroad self-government dictated by enlightened views of self-interest, the inspiring motive of all wholesome statutory enactments. Unfortunately the Commission has frowned upon such self-restraint and sought to substitute therefor its claim to the exercise of arbitrary power.

The question is one of vast political import and should not be left to the discretion of any administrative body—certainly not to any bureau of the Government bent upon the acquisition of autocratic power over the commerce and industry of this country. It is eminently a question for Congressional determination.

Besides, it may be observed in this connection that the duty imposed upon the Commission by the twenty-first section of the act to regulate commerce, to recommend to Congress such additional legislation "as the Commission may deem necessary" does not extend to great questions of public policy or to political questions which would naturally command the attention of Congress, but, in the language of Mr. Justice Shiras in *Texas and Pacific Railway v. Interstate Commerce Commission* (162 U. S.), should "be confined to the obvious purposes and directions of the statute." It is to be regretted that the Commission has not been guided throughout by this obvious rule of propriety.

THE REMEDY PROPOSED BY THE COMMISSION IS MISDIRECTED.

Beyond all question the remedy proposed by the Commission is misdirected. There are always two parties to offenses involving contractual relationships. In the case of rate cutting these are the shipper and the carrier. The shipper is invariably the promoter to the offense, for it is always to the interest of the carrier to secure tariff rates and to the interest of the shipper to secure less than tariff rates.

The concrete cases which supply the text and ostensible cause of the present movement of the Interstate Commerce Commission for the purpose of preventing rate cutting is furnished mainly by the persistent efforts of certain large shippers of packing-house products of the West to secure less than tariff rates for the carriage of their products. It is an old story to which public attention has been several times directed during the last two years. So uniform, however, has been the "cut" by the several competing companies that it constitutes practically a common rate, lacking only the legal requirement of publicity. The rates actually charged would avoid the censure of being "cut rates" if they were published. They involve no material discrimination with respect to producers, localities, or shippers, but do involve most outrageously discriminations with respect to carriers. All this is clearly stated by the Commission in its annual report just published. Therein it adduces the fact that at one time a particular road "was carrying into Kansas City 33½ per cent of the cattle slaughtered there and carrying out of that city only 2 per cent of the product."

The Commission also shows, in the report mentioned, that the cut rates are a source of benefit to the producer, the consumer, and the packer. At the same time they involve enormous loss to the carriers. This is stated by the Commission in reply to two self-addressed inquiries: First, "Who has the benefit of the reduction in these rates?" and, second, "Does it result in advantage to the producer and consumer, or is it absorbed by the packing house itself." The answer of the Commission to these questions is as follows:

It seems probable that in case of a reduction like this, which seems to be tolerably uniform and long continued, the general public must obtain some advantage, but we think that in the main these sums swell the profits of the packers. The number of these great concerns is only some five or six, and there does not appear to be much discrimination between them. Each usually knows about what the lowest rate is and usually manages to obtain that rate.

This clearly expresses the whole matter at issue. The cut rate is practically a common rate and irregular only because not published as required by law. This results in some benefit to the producer and the consumer, much more to the packer, and appalling loss to the carrier—the railroad company. This conclusion has been laconically expressed as follows by one of the Interstate Commerce Commissioners since his recent return from Chicago: "The fact is that five or six big shippers have for years been sandbagging the railroads." Hence the question arises, Why attempt to punish those who are sandbagged instead of having recourse to some plan to punish the sandbaggers? But it is just this injustice and manifest solecism into which the Commission has unconsciously stumbled in its most unreasoning desire to acquire a coveted power by visiting upon the railroad companies the severest and most humiliating punishment, namely, that of depriving them of the right to contract freely with the general public as to the commercial value of the service which they render and with no other

apparent excuse than an utter inability to base their claim to autocratic power upon any other plausible pretext.

What has been said of rates on packing-house products applies substantially to complaints as to "cut rates" on wheat and flour. The latter involves a long and sharply debated question as to the relative rates on wheat and flour. This is a complex and involved commercial and economic question. The general but rather vague conclusion of the Commission in regard to it is expressed as follows on page 16 of its last annual report:

To an extent the rate upon flour in the foreign market must be higher than that upon wheat. This is decreed by physical conditions which no statute and no commission can alter. To that extent this industry must expect to operate at a disadvantage.

In the light of all these facts the proposition to have recourse to the haphazard and absurdly misdirected remedy of governmental rate making for the cure of problematical evils attending the transportation of provisions, flour, and wheat, and the commerce in these commodities would be as absurd as it would be monstrous.

A Congressional investigation, as thorough and as impartial as that known as the "Cullom investigation of 1886," would not fail to set all these difficulties in their true light and to disclose a remedy which would be properly directed and efficacious.

I have sought neither to palliate nor to defend rate cutting. Its extent and effects have been greatly magnified for the purpose of predicated upon it the Commission's claim to the exercise of autocratic power; but it is an undoubted evil, and has no defenders other than those shippers who practice it to their own advantage and to the detriment of their competitors and of the carriers. Beyond all doubt it is an evil which can be abated and as successfully prevented as are other misdemeanors which are mala prohibita.

The art of playing off one railroad against another in the matter of securing cut rates in the interest of large and constant shippers was invented about thirty years ago by one endowed with the very genius of commercial affairs, and the game is apparently as successfully played to-day as it was in the beginning. It remains to be seen whether the courts are possessed of the power to circumvent and prevent this nefarious practice, under the provisions of section 16 of the act to regulate commerce, which section was recently invoked for the first time by the Interstate Commerce Commission.

It is stated by The Railway Age in its issue of April 4, at page 578, that the entire movement of packing-house products was not in excess of 800,000 tons for the latest year. The total movement of freights on the railroads of the country during the year 1900, the latest year of commercial statistics, amounted to 1,101,680,238 tons. From this it appears that the packing-house traffic amounted to less than one-tenth of 1 per cent of the total freight traffic of the country.

## THE POLITICAL ASPECTS OF GOVERNMENTAL REGULATIONS.

Mr. CHAIRMAN: In his recent testimony before the Committee on Interstate and Foreign Commerce of the House of Representatives, Commissioner Prouty stated at page 238 that 807 complaints against advances in rates or against rates which are alleged to be too high have been filed with the Commission during the last three years. A similar

statement was made by Commissioner Prouty in an address delivered at Chicago, on April 2, 1902, before the Illinois Manufacturers' Association. On the latter occasion he said:

While it (the Commission) can not grant relief, there are now pending before it for investigation complaints involving millions of dollars—I think I might say millions annually.

Manifestly these statements were intended to convey the impression that the charging of exorbitant rates is now rampant throughout the country. But this is absolutely refuted by the annual reports of the Commission, which show that during the last three years only 23 cases in all were decided by the Commission upon formal hearings, which cases embrace only eight complaints of unreasonable rates per se. Of these the unreasonableness of only four was sustained by the Commission, constituting less than one-half of 1 per cent of the 807 complaints alleged to have been made to the Commission, or less than one case in 200 complaints. This would indicate either that the Commission has been derelict in the discharge of its duties or that nearly 800 of the 807 complaints were inconsequential or outside the function of the Commission. The latter is undoubtedly the correct view of the case. Besides, the fact that not a single case of exorbitant rates has been sustained in the courts during the fifteen years of the life of the Commission raises the presumption that not one of the four cases of exorbitant rates in the entire United States as determined by the Commission during the last three years would stand the test of judicial inquiry.

The total number of cases decided by the Commission each year during the last three years, and the number of cases of unreasonable rates tried and sustained, according to the last three annual reports of the Commission, are stated in tabular form as follows:

Year.	Total number of cases decided.	Number of cases of unreasonable rates.	Number of complaints of unreasonable rates sustained.
1899.....	5	1	1
1900.....	8	4	1
1901.....	10	3	2
Total.....	23	8	4

The data from which this statement was compiled are found on pages 20 to 43 of the report of the Commission for 1899, on pages 34 to 48 of the report for 1900, and on pages 22 to 39 of the report for 1901.

Hon. Martin A. Knapp also attempted to create the same impression as to the charging of exorbitant rates, notwithstanding the fact that the statistics of the Commission indicate an average reduction of 22½ per cent for the entire country from 1890 to 1900 and a substantial reduction in the average rate in each one of the ten groups into which the railroads of the country are divided by the Commission.

#### THE POLITICAL ASPECTS OF THE CASE.

The fact adduced by Commissioner Prouty that during the last three years 807 complaints of unreasonable rates were filed with the Commis-

sion, of which only four, or less than one-half of 1 per cent were proved to be well founded, has a much more important significance than the members of the Interstate Commerce Commission seem to have imagined. It serves to illustrate a fact of controlling force respecting the broad subject of regulating commerce among the States, namely, the fact that from the beginning the complaints which have been filed with the Commission have had their origin chiefly in the discontent incident to struggles for commercial advantage. Such discontent, however, is the chief stimulant to commercial enterprise. It involves problems which must be wrought out by human intelligence, enterprise, and interaction, and not by any sort of governmental interference, for we live in a world in which we are all debating. Every individual and every section, State, city, town, village, and hamlet in this country is at rivalry with competitors near and far, and it is preposterous for any governmental agency to attempt to reconcile these commercial antagonisms. They are intangible to any sensible or just method of governmental regulation.

Besides, the exemption of such antagonisms from governmental interference is a natural and proper expression of the freedom of commercial and industrial intercourse, and has been so regarded in this country since the foundation of our Government. Faith in the conservatism which inheres in this conflict of commercial forces has begotten the maxim "Competition is the life of trade," a maxim which has found its way into our statute laws and has become a tenet of judicial faith and practice. So firmly are the people of this country imbued with this sentiment of nonpolitical interference with commercial struggles that for nearly a hundred years after the founders of our Government had incorporated into the national Constitution the provision that "Congress shall have power to regulate commerce among the States," no systematic attempt was made to exercise that power, and clearly owing to the danger attending any attempt to meddle with a commercial interaction which is not and can not properly become the subject of governmental concernment.

But at last by the act to regulate commerce, approved February 4, 1887, an apparent, but carefully limited and clearly defined, exception was made to this policy of noninterference with commercial struggle. The restraints provided by that act, however, applied exclusively to the struggle of railroad transportation, and not to the struggles of trade or of industrial pursuits. Moreover, the restraints imposed by the statute had already become approved as proper methods of railroad self-government after the various lines of the country had become closely connected and cooperative members of one great transportation organism—the American railroad system. As such these restraints already constituted a part of the American common law of the railroad, being based upon the lessons of experience and that consensus of public sentiment which Lord Bacon has characterized as *leges legum*.

Unfortunately, and as subsequently was proved without any sanction of law, the Interstate Commerce Commission assumed in the Maximum Rate case, decided by it in the year 1894, that the act to regulate commerce authorized it to prescribe both absolute and relative rates for the future. This assumption of authority clearly and inevitably embraced the power to determine the relative commercial status of competing cities, towns, States, and sections affected by that decision. This monstrous assumption of political power was denied by the



Supreme Court of the United States in the year 1897 (167 U. S., 479), and the attempt to secure it by legislation has ever since been denied by Congress. It is a political heresy which should be resisted in its beginning, and under every guise and pretense of limitation.

That the attempts of the Commission to secure the rate-making power intentionally and of necessity involves the Eutopian idea of securing control of the internal commerce of the country is evident from the utterances of the Commission during the last ten years, but perhaps nowhere more strikingly than in the following declaration, found on page 10 of its seventh annual report:

To give each community the rightful benefits of location to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonably just to both shipper and carrier is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation.

This expression of its "high ideal" of the work of regulation is a clean-cut proposition by the Commission to commit the Government of the United States to the task of determining all the struggles involved in the commercial and industrial interaction of the wealthiest, the most enterprising, and the most virile nation on the globe, a matter with which the Government should not meddle, and which is opposed to its settled and time-honored policy. It is rank political heresy. It is wildly impractical. It is such a departure from the time-honored policy of this nation that it may properly be characterized as revolutionary.

The fact that of the 807 complaints of unreasonable rates filed with the Commission during the last three years only four, or less than one in two hundred, were susceptible of demonstration under known principles of adjudication, indicates that nearly 400 of the 407 complaints were struggles which can not properly be made the subject of governmental concernment. This clearly exposes the absurdity of the proposition "to give each community the rightful benefits of location," to adjust the commercial and industrial interaction of this great and growing nation, and to accomplish that purpose by setting up at the seat of the National Government a bureau endowed with the function of prescribing rates for the future, with the chimerical object in view of "keeping different commodities on an equal footing" throughout the length and breadth of this land. This is a wide and most absurd departure from the views of public policy touching the interaction of commercial and industrial forces which were entertained by the founders of our Government, which operated as a barrier to any system of regulation of the highway for ninety-eight years, and which are dominant in this country to-day.

The fact is that the great mass of the complaints made to the Commission relate to fancied grievances, to the results of commercial struggles, which are not and never should be the subject of governmental concernment, and to the frictional resistances and incidental evils affecting the grandest system of transportation ever seen on this planet. In the face of all these evils, real or fancied, the American railroad system may fairly be said to be almost perfect.

As a further illustration of the fact that the complaints which are addressed to the Interstate Commerce Commission are mainly of the class not subject to governmental concernment, the fact may be mentioned that in its last annual report the Commission said: "The total

number of proceedings brought before the Commission during the year was 340. These include formal as well as informal complaints." But only 10 decisions were rendered by the Commission during the year on formal proceedings, only 2 of which involved unreasonable rates or 1 in 170 complaints preferred. In a word, the complaints of all sorts brought to the notice of the Commission had their origin mainly in commercial and industrial conditions completely outside the purview of governmental regulation.

I think, Mr. Chairman, that if you will carefully review the testimony of all the representatives of the various trades and industrial bodies who have laid their grievances before you during the last four years, you will find such grievances to be of the intangible character already described, being merely expressions of struggle for commercial advantage and not based upon any clearly defined errors or acts of injustice on the part of the railroad carriers.

It would be exceedingly difficult for Congress to differentiate between complaints which are based upon the conditions of commercial struggle and those complaints which are valid subjects of regulation under the terms of the act to regulate commerce, except in general terms expressive of the firmly established policy of the Government upon the subject. The distinction in concrete cases must be based upon the specific facts which govern in each particular case. The only object had in view in this connection has been to utter a word of warning against a policy which would devolve upon the National Government full responsibility for the course of the commercial and industrial development of this country, with all the dangers of sectional political struggle which would be engendered by such a departure from the principles of commercial freedom upon which our governmental institutions are founded.

There is another political aspect of the proposition to confer practically autocratic power upon the Interstate Commerce Commission to which I would here briefly allude. On pages 15 to 22 of my recent pamphlet entitled *A Political and Commercial Danger*, I stated at some length the reasons which sustain the belief that any provision of law granting to the Commission the power to prescribe rates for the future would eliminate the Federal judiciary from the function of passing upon the reasonableness of rates. This view is fully sustained by Mr. Commissioner Knapp, on page 296 of the present hearing, as follows:

While the determination whether a given rate is—that it has been—reasonable or not is a judicial question, the determination of the rate to be substituted in the future, is not a judicial question, can not be made a judicial question, and that authority, if exercised at all under the circumstances, must be exercised either by the legislative body itself or by an administrative tribunal, to which some portion of the legislative power has been delegated. Now, that being so, of course you must bear this in mind, that it is incorrect and misleading to speak of an appeal from the order of the Commission.

Mr. Knapp has made a labored argument to the effect that the determination of the Commission—a mere administrative body without permanent tenure of office, and subject at all times to the play of political forces—would be made in a judicial manner, and therefore would have practically the same effect as decisions rendered by the courts. This is too feeble for serious consideration. It would be superfluous to attempt any labored argument upon this point before a committee of the Senate of the United States.

The fact that the Federal judiciary is an independent branch of our Government has made it the bulwark of the liberties of the people. So long as the courts have final determination of all questions of commercial right, the time-honored policy of noninterference in the competitive struggles of trade will be maintained; but when the courts are eliminated from the determination of such questions the storm of political demand for commercial advantage will break loose, and the Commission and the political representatives of the people in Congress will bend to the blast. Besides, it is clearly evident that the sectional political struggles which would ensue from such a policy would endanger the permanence of our governmental institutions.

The exceedingly limited, and in most cases utterly ineffectual, way in which commission rate making exists in certain of the States of the Union affords no conception of the results which would ensue from placing the interstate and foreign commerce of the country under the control of a body characterized by Commissioner Prouty as "partly political and to an extent partisan."

### COMMISSIONER CLEMENT'S ANALOGY.

At a recent hearing Interstate Commerce Commissioner Clements based his argument in favor of granting to the Commission absolute authority over the commercial and transportation interests of this country upon the regulation of cab drivers in our large cities—a mere matter of municipal police. Mr. Chairman, the attempted analogy is strained to the last degree. There is no elementary principle of human government more clearly established than that in framing rules of public policy every tub must stand on its own bottom. Unless we observe this rule we shall stand our civilization on its head by forced analogies; for the course of human affairs does not run along any unbroken chain of causation except in the story books written for children. Every rule of public policy must be based upon its own peculiar state of facts and conditions.

It is difficult to conceive of anything more absurd than the idea that the regulation of the charges imposed upon the poor fellows who make a living by crying "Keb!" "Keb!" "Kerridge!" "Keb!" justifies the policy of placing the internal commerce and the transportation interests of this vast country at the absolute dictation of five men, without the possibility of submitting the reasonableness of their decisions to the Federal judiciary. No, sir; this country is not prepared for any such bureaucratic rule in the face of the fact, clearly proved by the experiences of the Commission, that extortionate rates have no existence in this country; that on the average less than one case a year of unjust discriminations is proven in our courts, and that the great mass of complaints which salute the Commission arise from mistaken notions of right, and from those competitive struggles of commercial interaction which never have been and never will become the objects of governmental concernment in this land of liberty.

### PREDICTIONS AS TO EXORBITANT RATES IN THE FUTURE.

Appreciating the fact that the experiences of the past afford no reason to apprehend an increase, but rather a decrease, of rates in the future, attempts are being made to arouse the impression that the

strangulation of competition through combination will eventuate in a very large and disastrous increase in rail rates throughout this country. The Interstate Commerce Commission has lent itself to the propagation of this theory. It is without any foundation in the facts of experience or in the probable outcome of present tendencies. Certain reasons for this opinion may be mentioned:

First. The general results of rates now in vogue upon railroad properties is well known and constitutes evidence as to their reasonableness, which could be invoked in any court in case of an attempt to raise rates to an unreasonable or exorbitant standard.

Second. The competition of rival commercial and industrial forces constitutes a potential restraint upon any attempt to advance rates above what is just and reasonable. There is an irresistible tendency toward a parity of values throughout the commercial nations of the globe and the effect of this is constantly to depress transportation charges.

Third. There is another safeguard against excessive rates, and that is the use of substitutes. For example, if the price of beef goes too high we shall have improved cooking with substituted nutritious vegetable food. The same principle applies quite generally in regard to other commodities which constitute a considerable part of the railroad traffic of the country.

But it is unwise generally to expend time or anxiety in attempts to provide against imaginary troubles, so the cure of the evils of excessive freight charges in the future may well be allowed to await developments.

## THE EVOLUTION OF THE AMERICAN RAILROAD SYSTEM.

MR. CHAIRMAN: Our intimately connected railroad system, which, in so far as relates to the interests of the traveler and the shipper, is operated as though it were a single organization under the control of one executive head, is the product of an evolution. At the beginning and until about the year 1855 each railroad was operated with no reference to any other railroad. Not only was the connection of lines avoided, but joint traffic had no existence. That, however, is of the dead past. The act of Congress of June 15, 1866, commonly known as The Charter of the American Railroad System, was the outcome of a general demand for railroad unity, embracing the juncture of tracks, the common use of cars over connecting lines, and those almost perfect facilities which we now have for continuous traffic over coterminal lines, embracing joint rates and joint traffic arrangements, which secure the practical unification of the railroad transportation interests of the country.

The organic unity of the railroads of the United States involved the necessity for railroad self-government, without which organic unity was of course impossible. This evolution and the consequent organization of lines into one great system of transportation involved as rules of self-government every one of those specific regulations which constitute the essential features of the act to regulate commerce. In fact, that act was builded upon those rules of self-government. Among those regulations are those relating to published classifications of merchandise, published rates, the prevention of fluctuating rates, the prevention of violations of published rates, the prevention of unjust

discriminations, the prevention of unjust or undue preferences, the continuous carriage of freights, and the prevention of sudden fluctuations in rates. By the force of coercive experiences all those requirements became the common law of the railroad in this country, and as such they only needed the sanction of statutory enactment to give them the character of governmental regulation. This was accomplished by the act to regulate commerce, February 4, 1887.

That act was no experiment based upon the fancy or the hypothetical conception of any dreamer. It was the carefully wrought out product of practical statesmanship, based upon economic and commercial usages, sought out and set in order by railroad managers under the stress of the stern lessons of experience and amid the conflicts of contending commercial and industrial forces. In proof of this, allow me to read to you a few historic passages from a report made to me in the year 1875, in my then official capacity as chief of the division of internal commerce, by Mr. Albert Fink, one of the ablest railroad men of the country at that time, a leader of men in the formation of the American railroad system. In this admirable report is sketched the ethical and commercial considerations which, in the view of its gifted author, should govern the railroad transportation interests of the American railroad system, and which subsequently, as the result of the patient investigations of Senator Cullom and his coadjutors on this committee, acquired the force of law in the so-called interstate-commerce act. I quote as follows from Mr. Fink's report, written twelve years before that act became law, and made a part of the appendix of my first annual report on the internal commerce of the United States:

A common carrier should strictly adhere to the rule to charge the same rate for transportation for the same articles between the same points, only discriminating on account of quantity as far as it influences the cost of transportation. He should not make any arbitrary distinctions, merely depending upon his will. Discriminations in rates of transportation should be based upon conditions and facts which can not be controlled by the railroad companies, and upon principles recognized as correct in all other business transactions. (See page 9.)

Under the present system of the management of competitive business of transportation lines and from the want of systematic cooperation between so many parties interested in this subject, nothing else can be expected but the constant fluctuation of rates of transportation, railroad wars, and unjust discrimination. Concert of action and cooperation become absolutely necessary in order to establish rates of transportation upon a proper basis and to maintain the same with some degree of permanency. (See page 10.)

The result is fluctuations in rates, unjust discrimination between shippers in the same locality, or between shippers in different localities. Rebates are generally paid and special contracts are secretly made, all in direct violation of the law that should govern common carriers. (See page 12.)

Not only the public suffer from these evils, but from the causes which produce them the proprietors of the railroads greatly suffer. (See page 13.)

I make part of my answer an article which I prepared explanatory of the principal features of the plan of organization and its operation, and point out to what extent the aid of the Federal Government may be required to carry more completely into effect the operation of the organization. (See page 13.)

In a word, this able report by Mr. Fink, written twelve years before the act to regulate commerce was enacted, stated clearly the principles of self-government and the particular expedients upon which that system of government of the American railroad system is based, which principles and expedients later on, as anticipated and hoped for by Mr. Fink, became incorporated into the interstate-commerce act.

I have said this much in regard to the origin and principles upon which the act to regulate commerce is based in order to prove to you

that it is firmly based upon the American common law of experience, and that it does not in the slightest degree impinge upon that freedom of commercial intercourse which is the outcome of commercial struggle and interaction, with which the National Government has never interfered. I have also sought to show to you how strangely this beneficent act contrasts with that idealistic attempt of the Interstate Commerce Commission to acquire autocratic control of the commercial and transportation interests of this country, an attempt which in the maximum-rate case caused the Supreme Court of the United States to exclaim, "Could anything be more absurd!" and again to suggest that the Interstate Commerce Commission seemed "to evolve, as it were, out of its own consciousness, the satisfactory solution of the difficult problem of just and reasonable rates for all the various roads in the country."

#### THE IMPORTANCE OF A THOROUGH CONGRESSIONAL INVESTIGATION OF THE WHOLE TRANSPORTATION QUESTION.

Mr. Chairman, I would fall very far behind my object at this time if I should fail to submit to you some considerations in favor of a thorough investigation of the whole transportation question in its varied and vitally important aspects.

The many vitally important questions which confront the country, touching any attempt at a radical change in our laws relative to the regulation of the railroads, seem to point unerringly to the necessity for a thorough Congressional investigation of the subject in advance of any attempt to legislate upon it. In this we may profit very much from the example set by the people of Great Britain.

As early as the year 1840 questions arising out of the independent corporate ownership and control of the railroads agitated the public mind in Great Britain. The old British ideas of liberty involved in the consideration of monopoly, competition, and combination, which from time immemorial had been the subject of heated public discussion and of reflective judicial debate, gave rise to just such apprehensions and political theorizing as those which now seriously affect public sentiment in the United States. A British statesman of influence declared at an early date that "the state must govern the railroads, or the railroads would govern the state." George Stephenson, eminent as a civil engineer, declared that "where combination is possible competition is impossible. These expressions were for years accepted in Great Britain as politico-economic dogmas, but have ceased to have any influence whatever upon the public mind in that country.

In the year 1844 a strong parliamentary committee was appointed for the purpose of inquiring into and providing against the assumed danger. The Hon. William E. Gladstone was chairman of that committee. Its labor resulted in an act of Parliament (Acts 7 and 8 Victoria, c. 85) passed in the year 1844, wherein it was provided that the Government might, upon terms stated in the act, at the expiration of fifteen years after completion, purchase any railroad constructed after the passage of the act. In a word, the British Parliament provided, conditionally, for governmental ownership and control of the railroads. But that power has never been exercised, and the public sentiment of Great Britain to-day utterly repudiates any such policy. This has come about as the result of the lessons of experience and of patient

and persistent parliamentary inquiry, reference being had particularly to the parliamentary investigations of 1840, 1844, 1846, 1852, 1865, 1867, 1872, 1881, 1888, and 1893-94. The results of these ten parliamentary inquiries were that the asserted dogmas hereinbefore quoted have been exploded, while other baseless notions such as those which now to a greater or less degree possess the public mind in this country have been dispelled; and the ancient principles of liberty and methods of justice still prevail in the regulation of the railroads of Great Britain. In this regard railroad regulation in that country strikingly illustrates the favorite British maxim, "We have government by discussion."

But how different has been the practice in this country. With an area—exclusive of Alaska and our insular possessions—twenty-five times that of Great Britain and Ireland, and a railroad mileage of 192,161 miles, as against 22,000 miles in Great Britain, we have had only one thorough Congressional investigation, namely, that conducted in the year 1886 by the Senate Committee on Interstate Commerce. The act to regulate commerce, drawn by Senator Cullom, chairman of that committee, is loyal to the fundamental American principle of government that all contested questions affecting the commercial interests of the country shall be subjected to the test of judicial inquiry and determination. But the populist proposition confronts the country in favor of eliminating the courts from this domain of justice, and in lieu thereof of substituting an autocratic rule of administrative authority without any Congressional investigation whatsoever.

There are also other and exceedingly important questions which demand Congressional investigation and public scrutiny in the light of such inquiry. Some of these questions are more important than those determined by the Senate investigation of 1886.

The magnitude and importance of the commercial, financial, and industrial interests involved repel the very idea of any radical legislation in advance of such inquiry as that here suggested.

Beyond all doubt a thorough Congressional investigation of the various commercial, economic, and political questions involved in the general subject of railroad regulation in this country would develop results quite as salutary as those realized in Great Britain. It may also be stated in favor of such action that the two committees of Congress as at present constituted are admirably fitted for such inquiry.

In his recent annual message to Congress President Roosevelt referred to the railroads as "the arteries through which the commercial lifeblood of this nation flows," and in urging the importance of investigation said: "The whole history of the world shows that legislation will generally be both unwise and ineffective unless undertaken after calm inquiry and with sober self-restraint."

#### SENATOR DOLLIVER'S INQUIRY.

In the course of my hearing before this committee on June 6, Senator Dolliver, of Iowa, propounded to me the following question:

"WILL NOT THE COMBINATION OF LINES EVENTUALLY GIVE THE RAILROADS SUCH CONTROL OVER RATES AS TO ENABLE THEM GREATLY TO ADVANCE THEIR CHARGES?"

This inquiry touches the pivotal point of the present hearings.

As at the beginning of our national life, so now we have no way of

judging the future but by the past and by the force and evident trend of existing conditions. Guided by such indications, I shall to the best of my ability attempt to answer the Senator's important inquiry.

From 1867 to 1902, a period of thirty-five years, the consolidation of competing and connecting railroads proceeded steadily. From time to time during that period the prediction was confidently made that such combinations would result in the absolute control of rates by railroad magnates, and that in consequence rates would be greatly advanced. But the historic record of railroad operations in this country proves those predictions to have been absolutely erroneous. During the period mentioned the control of rates exercised by railroad managers was weakened rather than strengthened. Freight charges fell constantly, and at times to such an extent as to force many hundreds of millions of dollars worth of railroad property into bankruptcy. The decline of rates from 1870 to 1900 is stated in the following table, taken from page 397 of the Statistical Abstract of the United States, published by the National Government:

*Average reductions in the freight charges per ton per mile on the railroads of the various sections of the country from 1870 to 1900.*

Lines.	1870.	1880.	1890.	1900.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Lines east of Chicago .....	1.61	0.87	0.63	0.55
Western and Northwestern lines.....	2.61	1.44	1.00	.89
Southwestern lines .....	2.95	1.65	1.11	.91
Southern lines .....	2.39	1.16	.80	.63
Transcontinental lines.....	4.50	2.21	1.50	.93
Average .....	1.99	1.17	.91	.70

This table shows that as the result of the interaction of all the forces and influences which prevailed during the thirty years from 1870 to 1900 the average rate on railroads east of Chicago, in the Western and Northwestern States, and in the Southwestern States during the year 1900 was only about one-third the rate in 1870; that the average rate on railroads of the Southern States east of the Mississippi River during the year 1900 was only about one-fourth the rate in 1870, and that the average rate on the various transcontinental lines during the year 1900 was only about one-fifth the rate during the year 1870. The average rate on all the railroads of the country during the year 1900 was only a little more than one-third the average rate during the year 1870.

According to the data of the Bureau of Statistics as stated in the above table the average rate per ton per mile fell from 1.99 cents in 1870 to 0.70 cent in 1890, a reduction of 1.29 cents per ton per mile. Multiplying this last-mentioned sum into the tons carried 1 mile in 1900, namely, 141,599,157,270 tons, we find that it amounted to \$1,826,629,128, which enormous sum the people of this country would have paid for freight charges in excess of what they did pay if the tonnage carried in 1900 had paid the rates charged only thirty years before. This saving of \$1,826,629,128 exceeded the value of the exports from the United States during any one year. It is also 184 per cent in excess of the amount actually collected by the railroads from freight during the year 1900.



This wonderful reduction in rates has been going on steadily during the last ten years and has not yet been arrested. The Interstate Commerce Commission states that during the year 1890 the average rate per ton per mile was 0.941 cent, and that in 1900 it was only 0.729 cent, a fall of 0.212 cent, which upon 141,599,157,270 tons carried 1 mile amounted to the sum of \$300,190,213 in excess of the amount actually collected by railroads from freight during the year 1900.

The foregoing statements are not materially affected by differences in the character of the freight transported on different lines, nor by changes in the character of the freights transported in the different years.

Prior to and during the entire period to which the above statement relates the consolidation of lines proceeded rapidly in all parts of the country. For example, the Pennsylvania Railroad Company in 1854 had under its control only 248 miles of road. In part by construction, but mainly by the acquisition of the lines of other companies, it controlled 10,202 miles of road in 1891. The Chicago and Rock Island Railroad Company, with an original mileage of only 185 miles, has by construction, but mainly by the acquisition of the lines of other companies, become the "Rock Island System," operating 6,979 miles of road. The Atchison, Topeka and Santa Fe Railroad Company owned and controlled 470.58 miles of road in 1873, but in 1901 it controlled 8,257 miles of road, mainly acquired from other companies.

The historic fact, therefore, stands unimpeached and incontrovertible that the consolidation or combination of railroad interests has not resulted in any advancement of rates, but has been followed by greatly reduced rates. It has also been followed by an enormous increase and wonderful improvement in the facilities for railroad transportation, and by an immense expansion of the commercial advantages afforded by such facilities.

#### THE CONSIDERATION AS TO THE RELATIVE IMPORTANCE OF THINGS.

There is an economic view of the question propounded to me by Senator Dolliver to which I would particularly invite the attention of the committee. I refer to the consideration as to the relative magnitude and influence of the various forces of transportation and of trade which govern the whole rate situation. I refer particularly to the comparative value of railroad earnings from freight, gross earnings, the value of railroad properties, and the value of merchandise transported on the railroads of the United States during the year 1900.

This is exhibited as follows:<sup>a</sup>

Freight revenue.....	\$1, 049, 256, 323
Gross earnings from operation.....	1, 487, 044, 814
Total capital or liabilities.....	11, 891, 902, 339
Estimated annual value of merchandise transported.....	25, 000, 000, 000

From this comparative statement it appears that the commercial value of the goods transported on railroads of the United States is about twice the value of the railroads of the United States, about seventeen times the total amount of railroad earnings from freight and

<sup>a</sup> The first three items of this statement are taken from the statistical report of the Interstate Commerce Commission, while "value of merchandise transported" is the result of careful estimates.

passengers, and about twenty-four times the receipts of the railroads from the transportation of freights. In a word, the forces of trade, measured by money value, are about twenty-four times those of transportation. This, of course, raises the strong presumption that transportation is the servitor of trade and not trade the servitor of transportation. It also suggests a cause of the reduction of rates.

#### THE MANNER IN WHICH THE COMPETING FORCES OF TRANSPORTATION AND OF TRADE ARE OPERATIVE.

In this connection the practical question naturally arises—in what manner and with what effect upon freight charges are the competing forces of transportation and of trade operative? Upon this point I would remark that there is a coercive, a constant, and a world-wide tendency in trade toward a parity of values as the direct result of the competition of product with like product commonly designated as the competition of commercial forces. This tendency toward a parity of values expresses itself in a constant stress upon transportation charges, for the evident reason that the rate on a given article between any two points must always be less than the difference in the price of such article at the point of shipment and at the delivery. The railroad tariff maker is never able to analyze this stress of prices upon rates, so as to exhibit its various elements. He simply designates it by the general expression “What the traffic will bear,” by which he means that any price in excess of a certain standard would injuriously diminish or perhaps entirely arrest some particular traffic movement. The commercial fact therefore stands unimpeached that the tendency toward a parity of values, otherwise known as the competition of commercial forces, has in the past, does to-day, and necessarily will in the future exert a potential influence in preventing any advance in freight charges to whatever extent railroad combinations may be effected.

#### THE EFFECT OF THE COMPETITION OF RIVAL TRADE CENTERS UPON RAILROAD FREIGHT CHARGES.

The competition of rival trade centers and of other sources of traffic exerts both directly and indirectly a very potential influence upon rates. It brings to bear upon the rates to and from every town and city the influence of the entire property interests of such centers of trade. Besides, the traffic interests of every railroad are greatly dependent upon the commercial prosperity of its termini and other traffic centers on its line. Hence the prosperity of the principal and other direct sources of traffic of each line must be protected by rates which will prevent any diversion of trade to rival trade centers. Thus every railroad company is bound by motives of self-interest to loyalty to its special sources of traffic, while at the same time necessarily reaching out for additional traffic from every available source. All this imparts an intense degree of complexity to the railroad-traffic situation. Its obvious and most important effect is to prevent any advancement in rates. Its actual result has been to reduce rates.

#### COMPETITION BETWEEN RIVAL RAILROAD COMPANIES.

The direct competition between rival lines of railroad transportation has exerted a most potential influence in the reduction of freight

charges. While closely related to each other in cooperative traffic movements, and bound together by the rules essential to the orderly conduct of the American railroad system, the lines of the various companies have been from the beginning and are to-day at sharp rivalry with each other with respect to competitive traffic. The situation presents exceedingly complex and varied illustrations of unity in diversity, which for many years has confounded the wisdom of the wise and baffled the skill or the most astute. Such competition in the past has tended powerfully to reduce rates. At times there have been destructive railroad wars. During these contests ruinous rates have prevailed, and the task of subsequently raising rates to a remunerative standard has usually been a very difficult one.

#### GENERAL DEDUCTIONS FROM THE FOREGOING STATEMENTS.

1. The predictions made from time to time during the last thirty-five years that railroad proprietors would speedily secure the absolute control of rates as the result of combinations and consolidations have been disproved by the results of experience. The control exercised over rates by railroad managers has decreased, and rates have continued to fall.

2. The average charge for railroad transportation in this country is less than in any other country. Approximately the average charge in the United States for 1900 as reported by the Interstate Commerce Commission—0.729 of a cent per ton per mile—was only about one-third the average rate in England and in France, and only about one-half the average rate charged in Germany, notwithstanding the fact that the cost of materials and the wages paid to railroad employees in the United States are higher than in the countries of Europe. This grand result is due mainly to the excellent manner in which the American railroad system is administered, and to the better equipment and the superior economic use of equipment in this country.

3. The constant reduction in the actual cost of transportation due to improved economies in the construction and management and to the enormous increase in the volume of traffic have permitted the constant reduction in freight charges to go on without any general reduction in net revenues and without impairing the value of railroad properties of this country.

#### THE RESULTS OF RAILROAD COMBINATION IN THE FUTURE A CONJECTURE.

In the face of the foregoing facts in regard to the fall of rates and the decreasing power of railroad managers over rates, I clearly apprehend that the inquiry propounded to me by Senator Dolliver is based upon the assumption that the combinations recently formed, or which may be formed, in the not distant future may become so great as to overpower those restraining influences of competition which in the past have resulted in the reduction of rates.

This is an hypothesis not susceptible of exact demonstration either as to its correctness or incorrectness. It abandons the lessons of experience and leads into a field of speculation. Still, the idea has gained such lodgment in the public mind as to command the attention of the legislator.

In order to weigh the possibilities and probabilities involved in the

inquiry it appears necessary to consider the purposes which are subserved by competition and combination in the economies of life, with special reference to railroad transportation in this country.

We live in a world in which we are all debating. Competition is the first expression and enduring motive in the struggle. On the other hand, an equally virile trait—the social instinct—leads men to associate themselves together in cooperative enterprise. Since the world began man's faith in his fellow-man was never before so pronounced as it is to-day. This is manifested in innumerable forms of social, industrial, and intellectual association. Combination has for its economic basis and justification three principal objects:

First. It is resorted to as a condition of good. In all ages, many of the world's activities have demanded joint physical and intellectual effort and the use of aggregated capital. The great industrial enterprises of the present day, and notably those of mining, manufacture, and the construction and management of railroads, are the product of such combinations. Thus far these agencies have wrought beneficially and produced grand results. Any proposition to curtail or forbid the use of aggregated capital would now be regarded as a vagary of the most absurd character.

Second. Cooperative rules and regulations in the nature of combination, are incidental to self-government among those who unite their efforts and capital for the accomplishment of any common object and are necessary for the maintenance of order and justice.

Third. During the last forty years the most impelling motive to combination has been its adoption as a restraint upon competition which when unrestrained runs to disorder and ruin. As such, combination has become the balance wheel of competitive enterprise. Labor combinations upon the trades-union plan are securely based upon this expedient. Such combinations, regarded a hundred years ago as conspiracies against the public interests, because in restraint of free competition, are to-day subject to no legal or judicial limitations other than those which pertain to the maintenance of order and a proper regard for public and private rights—limitations to which all combinations should be, and, as a rule, are subject.

The absolute necessity and the proven beneficence of the regulation of competition through combination has exposed the absurdity and flagrantly erroneous character of the familiar maxim, "Competition is the life of trade." Fifty years ago Judge Howe, of Wisconsin, afterwards a Senator of the United States from that State, clearly stated that competition is quite as often destructive of trade as promotive of trade, and the experiences of the last fifty years have afforded abundant proof of the correctness of that view. Under the intensely virile economic and commercial conditions of the present age competition is continually running to disorder and ruin. It has been proved a thousand times that its possibilities for good are subject to the limitations imposed by the restraints of combination of some sort. There is no economic proposition of the age more firmly established in the public mind. Human intelligence and acquisitiveness constitute the life of trade, and competition and combination are merely self-adjusting expressions of the interaction of forces.

The exploded adage "Competition is the life of trade" has in turn begotten the idea that any restraint upon competition is necessarily unjust restraint upon trade, and this idea has even found expression

in judicial utterance, but it is a fallacy which long ago ought to have been consigned to the rubbish heap of exploded economic notions. The idea that any restraint upon competition is necessarily an evil goes in the face of all the analogies in the conduct of human affairs, for our civilization is based upon a complex and nicely-adjusted system of restraints and limitations, wrought out by the teachings of experience throughout the ages. We are all tethered in a thousand ways for our mutual comfort and advancement. The world recognizes to-day that the assumed inviolability of competition is an idle dream.

THE BENEFICENCE OF COMBINATION IN RESTRAINT OF COMPETITION  
STRIKINGLY ILLUSTRATED IN THE AMERICAN RAILROAD SYSTEM.

The three incentives to combination just mentioned have had their most striking illustration and justification, in this country, in the construction and management of railroads, and in the conduct of their traffic interests. This is indicated in the following brief historical sketch:

Prior to the close of the civil war the railroads of the United States, as a rule, were physically and commercially disassociated. But the physical unity of the various lines and the continuity of traffic over connected lines was soon thereafter seen to be a national necessity. This thought was inspired by political as well as by commercial and economic considerations, for it was clearly perceived that the Union which had been saved by the force of arms was most likely to be reinvigorated and maintained by means of the facilities for direct and speedy commercial intercourse. The desired junction of lines, and continuity of through traffic over connected lines were fully legalized by the act of Congress of June 15, 1866, commonly known as "The charter of the American railroad system." The establishment of our national railroad system was also greatly promoted by the action of State legislatures which offered solicitous invitations to the railroads of other States to extend their lines across State boundaries and to engage freely in interstate traffic.

The juncture of tracks and unity of traffic interests forming one great combined national railroad system begat the second form of railroad combination above noted, namely, organic union involving rules and regulations in the nature of self-government. This was obviously necessary for the maintenance of the orderly conduct of the railroad system; for there can be no organic unity without a governing organization. Such government was established by means of joint traffic associations in various parts of the country.

But by far the most impelling motive to railroad combination has been that dictated by the necessity of imposing restraints upon a competition which when left uncontrolled ran at once and almost invariably to the ruin of the railroad companies and the demoralization of commerce. The fact that the railroads were so closely bound together physically by political and commercial necessities gave to their competitive struggle an intensely destructive character not experienced by disassociated competitors. This compelled the restraint of competition by combination. Such restraint was effected by traffic agreements between rival lines and coterminous lines. These agreements, in the nature of compromise, were highly beneficial to the extent to which they were adopted and honestly maintained. But they were greatly weak-

ened by what, in the light of subsequent events, appears to have been a legislative misadventure. I refer to the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." If the spirit of that statute, as clearly indicated by the words "unlawful restraints" in its title, had prevailed it would have been a beneficent act, conformed to the principles of justice and economic soundness upon which our governmental institutions are founded, but by what seems to have been an inadvertence the statute forbade "every contract in restraint of trade."

Being deprived of the power of self-government essential to the control of their own interaction with the specific object in view of placing cooperative restraints upon a fierce and destructive competition, certain of the railroads of the country have had recourse to a merger of their interests as a substitute for that restraint of cooperation upon competition which is conformed to sound economic principles and which the lessons of experience have proved to be just and beneficent, but which the Federal judiciary had declared to be forbidden by the act of July 2, 1890. (166 U. S., 290.)

It appears therefore that railroad combination, instead of being a simple proposition, dependent solely upon the volition of railroad managers, is an exceedingly complex proposition. As before shown, it had its origin and has as its main support to-day an important political object, and also vitally important commercial objects upon which the trade and industrial interests of the country securely rest. Besides, as shown, it has a substantial economic basis. Railroad combinations, such as those in regard to which apprehensions have been raised, are in fact but corollaries to that combination of lines and of traffic operations dictated by overpowering political and commercial considerations. It is unnecessary here to follow out the deductions which must readily occur to the minds of the members of this committee as to the delicacy and importance of the issues raised by the proposition to radically change the policy of the Government in regard to a system of transportation which has wrought so beneficially for the country upon the ground of a mere apprehension that its future operations may be detrimental to the public interests.

### RÉSUMÉ.

I have thus attempted to throw the light of fact and of reasoning upon the important question propounded to me by Senator Dolliver, which I here repeat:

"WILL NOT THE COMBINATION OF LINES EVENTUALLY GIVE THE RAILROADS SUCH POWER OVER RATES AS TO ENABLE THEM GREATLY TO ADVANCE THEIR CHARGES?"

By way of recapitulation of all I have said in reply to this inquiry I respectfully submit the following:

1. During the last thirty-five years the combination of competing railroad lines has been going on, and at the same time the companies have been compelled greatly to reduce their rates.

2. The consideration of the relative magnitude of the forces of commerce and of transportation indicates that transportation is the servitor of commerce and not commerce the servitor of transportation.

3. The influences of competition, which have resulted in the reduction of rates and in weakening the power of railroad managers over

rates, have been exerted under the following conditions: (a) The most potential and persuasive form of competition has been that of commercial forces which expresses itself in an irrepressible tendency toward a parity of values. (b) The competition of rival towns and cities and other traffic centers has exerted a very potential influence over rates. (c) The competition of rival railroads has been a very effective influence in demoralizing and permanently reducing rates.

4. The combination of competitive forces occurs under three distinct conditions: (a) As a condition of good, with respect to industries which can be more successfully prosecuted by associated than by individual capital and effort. (b) In that form of combination which is incidental to associated enterprise for the purposes of self-government. (c) In the restraint of competition by combination for the prevention of the disorder and ruin incident to unrestrained competition.

5. The railroads of the United States are combined under the following conditions: (a) Under the political condition of reinvigorating and maintaining the union of States, as provided in the act of June 15, 1866. (b) Under the commercial condition of supplying the means of uninterrupted facilities for joint traffic over connected lines. (c) With the economic object in view of restraining and regulating competition between rival lines which if unrestrained by combination invariably degenerate into disorder, to the detriment of both commerce and transportation.

6. The recent merger of railroad interests has been very largely the result of the decision of the Supreme Court of the United States in the trans-Missouri case, that combination in restraint of competition is forbidden by the act of July 2, 1890, commonly known as "the antitrust act."

#### CONCLUSION.

In view of the foregoing I respectfully submit that neither the lessons of experience nor the apparent trend of existing conditions indicate that in the future there can be or will be any material advancement in railroad freight charges. Certainly the mere apprehension that such advancement in rates may occur affords no possible excuse for that proposed radical change in the national policy which is embodied in the bills now before this committee for its consideration, having reference especially to the measure which is known as the Nelson-Corliss bill.

It seems to be a well-established historic fact that the most important object of the Constitution of the United States was to prevent the several States from employing the taxing power or any other attribute of sovereignty for the purpose of discriminating against other States, and thus of promoting their respective commercial and industrial interests. This cause of dissension and danger of dissolution was removed by conferring upon the Congress of the United States the sole power of regulating commerce among the States. The power thus conferred has ever since been exercised by simply refraining from any statutory provision in the nature of affording commercial or industrial advantage to any town, city, State, or section of the country. It is a latent power. By adhering rigidly to this governmental policy of non-interference the absolute freedom of trade has been preserved within our borders. The struggles of commercial and industrial endeavor

have been left absolutely to the conservatism which inheres in the untrammelled interaction of forces.

The interstate-commerce act contains not a word in derogation of this principle, for, as explained elsewhere in my hearing before this committee, that statute is firmly based upon the evolved law of the American railroad system, wrought out in the hard school of experience and of adopted usage, and may therefore be characterized as American common law. In the face of all this the Interstate Commerce Commission, and by its promptings certain representations of trade organizations, have appeared before you in favor of a policy which would confer upon the Commission the power to determine the course of the commercial and industrial development of this country. This appeal comes up to you in the wake of unsuccessful efforts on the part of the Commission to assert the right under the provisions of the act to regulate commerce to exercise the judicial function, to prescribe rates for the future, to eliminate the Federal judiciary from the consideration of vital questions of right and justice in the conduct of the internal commerce of this country, and of efforts to gain the power to exercise the revolutionary function of determining the relative commercial status and prosperity of different sections of this country, an attempt which the Supreme Court of the United States denounced in the maximum rate case with expressions of reprobation. (167 U. S. 479.)

The record of the proceedings of the Interstate Commerce Commission affords abundant proof of the wisdom of the policy of commercial freedom established in this country at the beginning. During the fifteen years of its existence the Commission has not discovered a single case of exorbitant charges which has been sustained by the courts, and it has been able to prove before the courts less than one case a year of unjust discrimination. This is the splendid official record of a railroad system embracing nearly 200,000 miles of road, over which many millions of transactions are recorded yearly, the total value of the goods transported aggregating about \$25,000,000,000 annually.

During the last three years 807 complaints were submitted to the Commission, which, however, gave rise to only 23 formal decisions by the Commission, involving only 8 cases of unreasonable rates, of which only 4 cases were sustained by the Commission. The great bulk of the complaints preferred to the Commission and which gave rise to informal hearings have had their origin in the incidental evils and frictional resistances of the most splendid system of transportation the world ever saw, and in complaints based upon discontent arising out of the competitive struggles of rival towns, cities, and industries for commercial advantage, with which struggles the Government of the United States has never meddled, and with which hopefully the Congress of the United States will never interfere while the intelligence and civic virtue of the American people shall endure.



**PETITIONS, MEMORIALS, AND RESOLUTIONS OF STATE LEGISLATURES AND COMMERCIAL ORGANIZATIONS TRANSMITTED THROUGH THE UNITED STATES SENATE TO THE COMMITTEE ON INTERSTATE COMMERCE DURING THE FIRST SESSION FIFTY-SEVENTH CONGRESS WITH REFERENCE TO S. 3521 (THE ELKINS BILL) AND S. 3575 (THE NELSON BILL).**

1.

*Resolution adopted by the Grain Dealers' Association in convention at Des Moines, Iowa, recommending the amendment to the interstate-commerce law.*

[Presented by Mr. Cullom December 4, 1901.]

*To the Senate and House of Representatives of the United States, to assemble in the Fifty-seventh Congress:*

The Grain Dealers' National Association in convention assembled at the city of Des Moines, Iowa, on the 3d day of October, 1901, does hereby memorialize your honorable bodies to enact into law such amendments to the existing interstate-commerce act as will effectually remedy the defects that have been found to exist therein and will insure its proper enforcement in the protection of the public interest in relation to transportation, and yet will in no way impair the just rights or privileges of common carriers.

It is the belief of this convention that the present law has been rendered practically inoperative by recent decisions of the Supreme Court, and that the public is without redress from unjust and unreasonable exactions and discriminations on the part of common carriers.

Your petitioners, therefore, earnestly pray that your honorable bodies will give the subject the consideration which its great importance demands and provide speedy relief to the public by the enactment of such amendments to the law as will give it full force and effect.

2.

*Joint resolution relating to S. 1439, commonly called the "Cullom bill," adopted by the Wisconsin legislature at its session in 1901.*

[Presented by Mr. Spooner January 7, 1902.]

Whereas various decisions of the Supreme Court of the United States during the past few years have rendered many of the most important provisions of the interstate-commerce law inoperative, in consequence of which the law in its present form fails to afford the relief to the shipping interests of the country which was the purpose of its enactment; and

Whereas a bill is now pending in the United States Senate known as S. 1439, commonly called the "Cullom bill," which is understood to have been framed by a member of the Commission with the approval of that body, comprising such amendments to the interstate-commerce act as, in its belief, will remedy the defects found to exist therein and render it effective in accomplishing the purposes of its original enactment; and

Whereas the said bill has received the indorsements of the principal commercial organizations of this State and of most of the similar organizations of importance throughout the country, and of the National Board of Trade, and its passage was urgently recommended to Congress by a national convention held at St. Louis November 20 last, consisting of delegates from ten national trade organizations, representing various lines of business, and twenty of the most important State and local organizations of similar character in this country: Therefore, be it

*Resolved by the assembly (the senate concurring),* That the Congress of the United States be, and is hereby, requested to speedily enact said Senate bill No. 1439 into law, and we urgently request that the Senators and members of the House of Representatives from this State cooperate in promoting the passage of said bill, and use their

best endeavors in securing for it precedence over other pending legislation as its great public importance demands.

*Resolved*, That the governor be, and he is hereby, requested to transmit copies of this memorial to the President of the Senate, Speaker of the House of Representatives, and to each of our Representatives.

---

3.

*Petition of Grain Dealers' Association of Des Moines, Iowa, praying for an amendment to the interstate-commerce law.*

[Presented by Mr. Dolliver, January 7, 1902.]

DES MOINES, IOWA, October 3, 1901.

*To the Senate and House of Representatives of the United States assembled in the Fifty-seventh Congress:*

The Grain Dealers' National Association in convention assembled, at the city of Des Moines, Iowa, on the 3d day of October, 1901, does hereby respectfully memorialize your honorable bodies to enact into law such amendments to the existing interstate-commerce act as will effectually remedy the defects that have been found to exist therein, and will insure its proper enforcement in the protection of public interest in relation to transportation, and yet will in no way impair the just rights or privileges of common carriers.

It is the belief of this convention that the present law has been rendered practically inoperative by recent decisions of the Supreme Court, and that the public is without redress from unjust and unreasonable exactions and discriminations on the part of common carriers.

Your petitioners therefore earnestly pray that your honorable bodies will give the subject the consideration which its great importance demands, and provide speedy relief to the public by the enactment of such amendments to the law as will give it full force and effect.

The foregoing memorial to Congress was unanimously adopted by the Grain Dealers' National Association in convention, at the place and on the date above mentioned.

B. A. LOCKWOOD, *President*.

CHARLES S. CLARK, *Secretary*.

Attest:

---

4.

*National Live Stock Association, praying for legislation giving the Interstate Commerce Commission adequate power to correct discriminating rates, etc.*

[Presented by Mr. Frye January 7, 1902; also by Mr. Warren; also by Mr. Elkins.]

The following memorial was unanimously adopted by the fifth annual convention of the National Live Stock Association held in Chicago, Ill., December 3, 4, 5, 6, 1901:

*To the Honorable President, the Senate, and the House of Representatives of the United States:*

The National Live Stock Association respectfully represents that it is an organization composed of over 150 of the principal stock raisers, feeders' and breeders' organizations, live-stock exchanges, stock-yards companies, and various commercial organizations of the United States whose names we append hereto; that it represents more than \$4,000,000,000 of invested capital, and that it was organized for the purpose of promoting the best interests of the live-stock industry of this country.

This association in behalf of its constituency earnestly urges upon Congress the great importance and increasing need of Federal legislation which will give to the Interstate Commerce Commission adequate power to correct discrimination, remove preferences, abate unreasonable rates, and, where necessary, to prescribe the maximum and minimum rates, making its decision effective, pending any appeal to the courts.

When the present interstate-commerce law was enacted in 1887 it was at least popularly supposed, and we believe clearly intended, that it gave to the Interstate Commerce Commission, after due hearing and investigation, the power to say what was a reasonable or unreasonable rate, and to enforce its decisions. Court decisions have since declared that the Interstate Commerce Commission does not have the power to fix rates for the future either directly or by indirection. As substantially every complaint that has been or would be brought before the Commission involves the question of the reasonableness of rates, it can be readily seen that these court decisions practically wipe out the only real power the Commission was supposed to have, and limits its usefulness to the collection and promulgation of statistics.

While governmental control over railroad charges through the medium of the Interstate Commerce Commission has been gradually fading away, the general railroad situation has undergone portentous changes. Little independent carriers have been forced to the wall and absorbed by their larger competitors, which in turn have combined with or sold out to other larger competing systems, until to-day, by this centralization, the rail transportation facilities of this country are practically controlled by scarce half a dozen different interests. By these transitions, reorganizations, and combinations added burdens have not only been placed upon the man who pays the freight by reason of increases in the fixed charges or indebtedness of the railroads, but his sole remaining safeguard by free competition has been virtually eliminated, so that the public, which now has greater need of intelligent and effective Federal supervision and regulation of railroad charges, has less protection to-day than previous to the enactment of the present interstate-commerce law.

The general and marked advance in rates during the past three years of unexampled prosperity to the railroads were apparently unnecessary and seemingly unwarranted upon any other theory than the intent of the railroads to exact all they could. The multiple economies of railroad operation, together with the enormous increase in the volume of the traffic, would seem to logically suggest a reduction instead of an advance. Their action, however, enables us to unmistakably forecast what they would do, unrestrained by Federal control, when by further consolidations or by other agencies competition becomes entirely stifled.

The members of the National Live Stock Association recognize that the railroads are powerful agencies of progress, and that more than any other factor they have contributed to the development of the country. The superb service they perform merits our commendation. We expect to pay the railroads the cost of the service they render, together with a reasonable profit on their investment; we do not want the service for any less, nor ought we to be compelled to pay more. We are not presuming to say what are or may be reasonable and fair rates, but we do emphatically protest against the railroads being the sole arbiters of their charges and exacting what they think the traffic will stand, or, in plainer language, all they can get.

If railroad rates are fair and reasonable, the railroads should not fear any investigation of them by an impartial tribunal. The objections they make against the proper Federal supervision of rates by an expert commission confirms the suspicion that railroad rates need regulating.

Either the Government must assume at once an intelligent and comprehensive control over railroad charges or prepare for absolute ownership of the transportation facilities of this country.

For these, among many other patent reasons, the members of the National Live Stock Association respectfully request Congress to give early attention to this much needed legislation, which has already been too long delayed.

Attest:

JOHN W. SPRINGER, *President*.  
CHAS. F. MARTIN, *Secretary*.

#### MEMBERSHIP ROLL OF THE NATIONAL LIVE STOCK ASSOCIATION.

*Arizona*.—Arizona Wool Growers' Association; Live Stock Sanitary Board, Arizona.  
*California*.—Kern County Cattle Growers' Association; Southern Pacific Railway Company; Central California Stock Growers' Association.  
*Canada*.—Dominion Short Horn Breeders' Association.  
*Colorado*.—Custer County Cattle Growers' Protective Association; Denver Union Stock Yards Company; Southern Colorado Stock Growers' Protective Association; State Veterinary Sanitary Board; Fort Collins Sheep Feeders' Association; Logan County Cattle and Horse Protective Association; Lincoln and Elbert County Wool Growers' Association; Lincoln County Cattle Growers' Association; San Luis Valley Cattle and Horse Growers' Association; Roaring Fork and Eagle River Stock Associa-

tion; Eastern Colorado Stockmen's Protective Association; North Fork Valley Cattle Growers' Association; Weld County Live Stock Association; Park County Cattle Growers' Association; Eagle and Grand River Stock Growers' Association; Denver Chamber of Commerce and Board of Trade; Gunnison County Stock Growers' Association; Colorado Midland Railway Company; Colorado and Southern Railway Company; Crystal River Railroad Company; North Park Stock Growers' Association; White River Stock Growers' Association; Grand River Stock Growers' Association; Saguache Stock Growers' Association; Western Slope Wool Growers' Association; Cattle and Horse Growers' Association of Colorado; Denver and Rio Grande Railroad Company.

*Idaho.*—Blaine, Lincoln, and Cassia Counties Wool Growers' Association; Sheep and Wool Growers' Association of Idaho; Sheep and Wool Growers' Association of Southern Idaho; Fremont County, Idaho, Wool Growers' Association; Oneida County, Idaho, Wool Growers' Association; Washington County Wool Growers' Association.

*Illinois.*—Illinois Central Railroad Company; Chicago and Northwestern Railroad Company; Chicago Live Stock Exchange; American Short Horn Breeders' Association; St. Louis Live Stock Exchange; St. Louis National Stock Yards Company; National Irrigation Association; Union Stock Yards and Transit Company, Chicago; State Board of Live Stock Commissioners.

*Indiana.*—American Shetland Pony Club; American Shropshire Registry Association; Polled Durham Cattle Club of America.

*Iowa.*—Sioux City Live Stock Exchange; Sioux City Stock Yards Company; Iowa Improved Stock Breeders' Association.

*Kansas.*—The Kansas Improved Stock Breeders' Association.

*Kentucky.*—American Saddle Horse Association.

*Michigan.*—National Lincoln Sheep Breeders' Association.

*Minnesota.*—Minnesota Live Stock Breeders' Association; South St. Paul Live Stock Exchange.

*Missouri.*—American Hereford Cattle Breeders' Association; American Angora Goat Breeders' Association; American Galloway Breeders' Association; Kansas City Stock Yards Company; St. Joseph Stock Yards Company; South St. Joseph Live Stock Exchange; Kansas City Live Stock Exchange; The Wabash Railroad Company; The Commercial Club of Kansas City.

*Montana.*—Montana Stock Growers' Association; Eastern Montana Wool Growers' Association; Central Montana Wool Growers' Association; North Montana Wool Growers' Association.

*Nebraska.*—Union Stock Yards Company, of Omaha; South Omaha Live Stock Exchange; Nebraska Stock Growers' Association; Fremont, Elkhorn and Missouri Valley Railway Company; Union Pacific Railway Company.

*Nevada.*—Nevada Wool Growers' Association.

*New Mexico.*—Black Range Protective Association; Sheep Sanitary Board, New Mexico; Cattle Sanitary Board, of New Mexico; Pecos Valley and Northern Railroad Company; Sheep and Wool Growers' Association of New Mexico.

*New York.*—National Association of Exhibitors of Live Stock.

*Ohio.*—American Rambouillet Sheep Breeders' Association; Cincinnati Union Stock Yards Company; Cincinnati Live Stock Commission Merchants' Association; Red Polled Cattle Club of America.

*Oklahoma.*—Oklahoma Live Stock Association.

*Oregon.*—Pacific Northwest Wool Growers' Association; Oregon Stock Breeders' Association; Oregon Railway and Navigation Company; Oregon Wool Growers' Association.

*Pennsylvania.*—West Philadelphia Stock Yards.

*South Dakota.*—Western South Dakota Stock Growers' Association; Missouri River Stockmen's Association.

*Tennessee.*—State Board of Agriculture.

*Texas.*—Fort Worth Stock Yards Company; Cattle Raisers' Association of Texas; Texas Live Stock Association; El Paso-Rock Island Railway Company.

*Utah.*—Utah Wool Growers' Association; Utah Live Stock Association; Dairymen's Association of Utah; Oregon Short Line Railway Company; State Irrigation Association of Utah.

*Wyoming.*—Wyoming Stock Growers' Association; Fremont County Wool Growers' Association; Sweetwater Hereford Cattle Breeders' Association; Uinta County, Wyoming, Wool Growers' Association; Snake River Stock Growers' Association; Board of Sheep Commissioners, Wyoming; State Agricultural College, Wyoming; Northern Wyoming Wool Growers' Association; Eastern Wyoming Wool Growers' Association; Carbon County, Wyoming, Wool Growers' Association; Natrona County Wool Growers' Association.

## INDIVIDUAL MEMBERSHIP.

John Cleman, North Yakima, Wash.	R. M. Allen, Ames, Nebr.
A. C. Huidekoper, Meadville, Pa.	Mrs. Lillian Gregory, Kansas City, Mo.
E. C. Huidekoper, Yule, N. Dak.	J. G. McCoy, Wichita, Kans.
John Clay, jr., Chicago, Ill.	John M. Holt, Miles City, Mont.
E. D. Brown, Scottsville, N. Y.	John Sparks, Reno, Nev.
S. W. Allerton, Chicago, Ill.	Peter Jansen, Jansen, Nebr.
C. M. O'Donel, Bell Ranch, N. Mex.	A. B. Robertson, Colorado, Tex.
Frank Rockefeller, Belvidere, Kans.	F. M. Stewart, Rapid City, S. Dak.
I. T. Pryor, Kansas City, Mo.	J. D. Wood, Spencer, Idaho.
James Leonard, Denver, Colo.	D. N. Stickney, Laramie, Wyo.
A. B. Urmston, El Paso, Tex.	H. A. Jastro, Bakersfield, Cal.
A. T. Atwater, Kansas City, Mo.	George F. Patrick, Pueblo, Colo.
Alex Bowie, Chugwater, Wyo.	Addison C. Thomas, Chicago, Ill.
Emil Taussig, New York, N. Y.	C. C. Goodwin, Salt Lake City, Utah.
Frank P. Bennett, Boston, Mass.	J. R. Stoller, Kansas City, Mo.
Nelson Morris, Chicago, Ill.	E. H. Callister, Salt Lake City, Utah.
F. E. Warren, Cheyenne, Wyo.	C. S. Barclay, West Liberty, Iowa.
George Y. Wallace, Salt Lake City, Utah.	John F. Hobbs, New York, N. Y.
H. H. Huffaker, Silver City, Iowa.	D. W. Willson, Elgin, Ill.
Richard Walsh, Clarendon, Tex.	Theo. L. Schurmeier, St. Paul, Minn.
J. W. Martin, Richland City, Wis.	H. H. Hinds, Stanton, Mich.
H. M. Hunter, Port Hope, Manitoba, Canada.	W. C. McDonald, White Oaks, N. Mex.
D. B. Zimmerman, Dickenson, N. Dak.	W. L. Foster, Shreveport, La.
F. C. Lusk, Chico, Cal.	A. P. Bush, jr., Colorado, Tex.
Overton Lea, Nashville, Tenn.	John C. Johnson, Bridgeport, W. Va.
Charles W. Barney, Gillette, Wyo.	Ed. H. Reid, Colorado Springs, Colo.
Theodore Cuyler Patterson, Philadelphia, Pa.	R. C. Judson, Portland, Oreg.

## 5.

*Memorial of the legislature of the State of Wisconsin, praying for the enactment of legislation to make more effective the work of the Interstate Commerce Commission.*

[Presented by Mr. Quarles, January 7, 1902.]

*Joint resolution adopted by the Wisconsin legislature at its session in 1901.*

Whereas various decisions of the Supreme Court of the United States during the past few years have rendered many of the most important provisions of the interstate-commerce law inoperative, in consequence of which the law in its present form fails to afford the relief to the shipping interests of the country which was the purpose of its enactment; and

Whereas a bill is now pending in the United States Senate, known as S. 1439, commonly called the "Cullom bill," which is understood to have been framed by a member of the Commission, with the approval of that body, comprising such amendments to the interstate-commerce act as in its belief will remedy the defects found to exist therein and render it effective in accomplishing the purposes of its original enactment; and

Whereas the said bill has received the indorsements of the principal commercial organizations of this State and of most of the similar organizations of importance throughout the country, and of the National Board of Trade, and its passage was urgently recommended to Congress by a national convention held at St. Louis November 20 last, consisting of delegates from ten national trade organizations, representing various lines of business, and twenty of the most important State and local organizations of similar character in this country: Therefore, be it

*Resolved by the assembly (the senate concurring),* That the Congress of the United States be, and is hereby, requested to speedily enact said Senate bill No. 1439 into law, and we urgently request that the Senators and Members of the House of Representatives from this State cooperate in promoting the passage of said bill and use their best

endeavors in securing for it precedence over other pending legislation as its great public importance demands.

*Resolved*, That the governor be, and he is hereby, requested to transmit copies of this memorial to the President of the Senate, Speaker of the House of Representatives, and to each of our Representatives.

---

6.

*Petition of the National League of Commission Merchants of the United States, praying for legislation to enforce the findings of the Interstate Commerce Commission.*

[Presented by Mr. Frye, January 20, 1902.]

JANUARY 18, 1902.

Hon. WM. P. FRYE,  
*President United States Senate.*

DEAR SIR: At the tenth annual meeting of the National League of Commission Merchants of the United States, held in Philadelphia, Pa., January 8-10, 1902, it was—

*“Resolved*, That the National League of Commission Merchants of the United States petition Congress to pass such legislation as will confer upon the Interstate Commerce Commission power to enforce their findings.”

Very respectfully,

A. WARREN PATCH,  
*Secretary.*

---

7.

*Petition of the Wisconsin Cheese Makers' Association praying for the enactment of legislation to make more effective the work of the Interstate Commerce Commission.*

[Presented by Mr. Quarles, January 28, 1902.]

*Resolved*, That this convention regards the present freight rate of 33 cents per hundred pounds on cheese from southern Wisconsin points to Chicago as unjust, burdensome, and out of proportion to the rate on articles of like character and of more than double the value.

*Resolved further*, That a committee of three be appointed to devise ways and means to cause a reduction of said freight rate to a just amount.

*Resolved by the Wisconsin Cheese Makers' Association*, That our representatives in Congress, both Senators and Representatives, be urgently requested to use their best efforts to secure the passage of the amended laws on interstate commerce to make the decision of the Commission effective, and that the secretary be directed to write to every one.

*Resolved*, That this association indorses the movement by Manitowoc and Calumet County cheese makers of forming an association for practicing and furthering their interests.

The committee on legislation heartily approve and indorse the resolution offered by the committee on resolutions recommending that the State traveling cheese instructors have a general supervision of the sanitary conditions of cheese factories and the milk product delivered at cheese factories.

*And be it further resolved*, That we favor a suitable appropriation from the State to make a proper exhibit of the dairy industry of the State of Wisconsin at the St. Louis World's Fair in 1903.

## 8.

*Resolution passed by the Retail Dealers' National Association October 3, 1902, favoring the passage of a law extending the powers of the Interstate Commerce Commission.*

[Presented by Mr. Gamble, January 30, 1902.]

DES MOINES, IOWA, October 3, 1901.

*To the Senate and House of Representatives of the United States, assembled in the Fifty-seventh Congress:*

The Grain Dealers' National Association in convention assembled, at the city of Des Moines, Iowa, on the 3d day of October, 1901, does hereby respectfully memorialize your honorable bodies to enact into law such amendments to the existing interstate-commerce act as will effectually remedy the defects that have been found to exist therein and will insure its proper enforcement in the protection of public interest in relation to transportation, and yet will in no way impair the just rights or privileges of common carriers.

It is the belief of this convention that the present law has been rendered practically inoperative by recent decisions of the Supreme Court, and that the public is without redress from unjust and unreasonable exactions and discriminations on the part of common carriers.

Your petitioners therefore earnestly pray that your honorable bodies will give the subject the consideration which its great importance demands, and provide speedy relief to the public by the enactment of such amendments to the law as will give it full force and effect.

The foregoing memorial to Congress was unanimously adopted by the Grain Dealers' National Association in convention, at the place and on the date above mentioned.

B. A. LOCKWOOD, *President.*

Attest:

CHARLES S. CLARK, *Secretary.*

## 9.

*Petition Chamber of Commerce of Colorado Springs, Colo., for amendment to interstate-commerce law.*

[Presented by Mr. Teller, February 11, 1902.]

*Resolved*, That the Chamber of Commerce of Colorado Springs, comprising a membership of 320 representative citizens and business men in all walks of life, resident in and about Colorado Springs, does hereby indorse and recommend the passage of the bill (known as bill H. R. 8337) to amend the "Act to regulate commerce," introduced into the House of Representatives January 9, 1902, by Hon. John B. Corliss of Michigan; but we are of the opinion that said act should be further amended by giving the Interstate Commerce Commission full rate-making powers. We make this recommendation for the reason that the recent combination of great railway systems, either by amalgamation or community of interest relations, will, in a large measure, destroy the competition that has heretofore existed, and for this reason it is highly essential for the protection of the people of this country that the Interstate Commerce Commission have full power to adjust and fix railway rates.

CHAMBER OF COMMERCE OF COLORADO SPRINGS, COLO.,  
D. B. FAIRLEY, *President.*

GILBERT MCCLURG, *Secretary.*

## 10.

*Resolution of the Jobbers Union of St. Paul, Minn., protesting against the enlargement of the powers of the Interstate Commerce Commission.*

[Presented by Mr. Nelson, February 17, 1902.]

ST. PAUL, MINN., February 8, 1902.

Hon. KNUTE NELSON,  
*Senate Chamber, Washington, D. C.*

DEAR SIR: At a meeting of the executive committee of the St. Paul Jobbers Union the following resolution was unanimously adopted:

*"Resolved*, That in the opinion of the members of this association the powers of the

Interstate Commerce Commission should not be enlarged, and that it would not be in the interest of shippers to transfer the rate-making power to men unacquainted with local conditions and necessities throughout the country. That the powers of the commissioners are ample to carry out the purpose for which they were created. That the demand for increase of power comes almost entirely from the members of the Commission, certain interested railroads, and not from shippers.

"Resolved, That the president and secretary be instructed to forward a copy of this resolution to each of the Senators and Representatives from Minnesota."

J. W. COOPER, *President.*

H. P. HALL, *Secretary.*

## 11.

*Petition of Goshen Milling Company, of Goshen, Ind., praying for the passage of the proposed amendment to the interstate-commerce law.*

[Presented by Mr. Fairbanks, February 19, 1902.]

GOSHEN, IND., February 14, 1902.

Senator FAIRBANKS, Washington, D. C.

DEAR SIR: Please do all that you can to promote the passage of the proposed amendment to the interstate law, giving the Commission power to enforce its findings.

Just at present manufacturers of flour are unjustly discriminated against by the railway companies, being compelled to pay higher rates on export flour than is charged on the raw material—wheat.

Yours, very truly,

THE GOSHEN MILLING COMPANY,  
F. E. C. HAWKS, *Secretary.*

## 12.

*Resolution of the legislature of the State of South Dakota and of other States, and of commercial bodies, favoring enactment of legislation enlarging and extending the powers of the Interstate Commerce Commission.*

[Presented by Mr. Gamble, February 22, 1902.]

WASHINGTON, D. C., February 20, 1902.

DEAR SIR: Permit me to call your attention to the following expressions, as evidence of the strong public desire and need for prompt amendment of the "act to regulate commerce."

President Roosevelt, in his message to the Fifty-seventh Congress, said:

"The act should be amended. The subject is one of great importance and calls for the earnest attention of the Congress."

The last State legislature of Michigan, by concurrent resolution, appealed to Congress to amend the act "so as to enable the Interstate Commerce Commission to put into full force and effect its rulings and decisions."

The last State legislature of Wisconsin, by concurrent resolution, petitioned Congress to "speedily amend the act," and requested the Senators and Representatives of that State "to cooperate in promoting the passage of the measure to that end."

The last State legislature of South Dakota, by concurrent resolution, memorialized Congress, urging prompt amendment of the act, "authorizing and empowering the Commission to fix reasonable and just rates, and also adequate and well-defined procedure for the proper enforcement and carrying into effect its decisions and orders. This enlargement of the statute is imperatively needed to give the law efficiency, so that the objects and benefits originally designed may be fully secured to the people."

The last State legislature of Kansas, by concurrent resolution, petitioned Congress to amend the act "so as to enlarge the powers of the Interstate Commerce Commission and give to it authority to prevent unjust discrimination in the interstate carrying trade."

The last State legislature of Louisiana, by concurrent resolution, petitioned Congress to amend the act and requested the Senators and Representatives of that State



"to urge upon Congress the passage of amendments defining with more precision the powers and duties of the Commission."

These and other State legislatures, recognizing the demand of the people for relief from present intolerable conditions, have been content to appeal to the United States Congress for remedial legislation.

The Industrial Commission of the United States, in its final report to Congress, says: "It is incontestable that many of the great industrial combinations had their origin in railroad discriminations. A great change in the status and powers of the Interstate Commerce Commission has taken place since its institution in 1887. The decisions of judicial tribunals have greatly modified and, in general, reduced the powers and functions which the Commission was at first supposed to possess. We recommend that the authority of the Interstate Commerce Commission necessary for the adequate protection of shippers, and clearly intended by the framers of the law, be restored, and that the powers and functions of the Commission be enlarged."

The Interstate Commerce Commission, in its fifteenth annual report to Congress, reiterates its appeal for speedy amendment of the act, and says:

"The Commission has nothing new to propose. Knowledge of present conditions increases the necessity for legislative action upon the lines already indicated."

The National Association of State Railroad Commissioners, in convention at San Francisco, June 5, 1901, by resolution appealed to the United States Congress to amend the act, and said: "Congress is earnestly urged to the prompt enactment of legislation to clothe the Interstate Commerce Commission with power and authority to fix charges when its judgments need to be so perfected;" and again, in convention at Charleston, S. C., February 15, 1902, reiterated its appeal in forceful language.

The National Grange Patrons of Husbandry, in annual convention, appealed to Congress for amendment of the act, and said:

"We furnish nearly 60 per cent of all freight carried by the railroads of this country. We believe that the Commission has tried to carry out the act, but by virtue of judicial decisions it has ceased to be a body for the regulation of interstate carriers. We approve the recommendation as to enlarging the powers and duties of the Commission, giving it and charging it with the duty of fixing maximum rates."

The National Board of Trade, in annual convention in 1901, and again in 1902, urged Congress to promptly amend the act, and said:

"Resolved, That the act to regulate commerce should be amended so as to empower the Interstate Commerce Commission to enforce its findings."

The National Live Stock Association, in annual convention, appealed to the United States Congress to amend the act "so that the Interstate Commerce Commission be granted adequate powers to pass upon questions of unreasonableness and unjust railroad rates, and that some legal effect be given to their decisions when rendered."

The Grain Dealers' National Association, in annual convention assembled, at Des Moines, Iowa, October 3, 1901, memorialized the United States Congress "to enact into law such amendments to the existing interstate-commerce act as will remedy the defects that have been found to exist therein and insure its proper enforcement."

The League of National Associations, in convention assembled, with delegates from 41 organizations, petitioned the United States Congress to amend the act "so as to insure its more effective operation in removing existing inequalities and unreasonable exactions in transportation charges and prevent the practice of discriminations now so prevalent."

The Millers' National Association of the United States, in convention assembled, petitioned the United States Congress to amend the act "to restore to the Commission the powers necessary for the protection of the public and enable it to enforce its findings and orders."

The National League of Commission Merchants, the National Hay Association, the National Business League, the National Wholesale Lumber Dealers' Association, the National Wholesale Druggists' Association, and over 125 prominent organizations of shippers—national, State, and local—have in convention, by strong resolutions, petitioned the United States Congress for legislation amendatory of the "Act to regulate commerce." These petitions and appeals have all been filed with Congress and are of record.

With the recent disclosures as to inequality of rates, discriminations, rebates, and utter disregard of published tariffs by the transportation lines of the country, evidencing the impotency of the act, and the expressions cited above, can it be maintained that the present law is sufficient and may be enforced or that there is not a strong demand from the people for prompt relief from Congress?

Respectfully,

FRANK BARRY, *Secretary.*

## 13.

*Petition of Indiana State Board of Commerce, of Indianapolis, Ind., praying for certain amendments to the interstate-commerce law.*

[Presented by Mr. Fairbanks, February 23, 1902.]

Whereas discriminations in freight rates are resulting in great injustice to individuals and great damage to industries in Indiana; and

Whereas the interstate-commerce act as at present constituted is inadequate to relieve this state of affairs; and

Whereas it is the sense of the Indiana State Board of Commerce that amendments to the interstate-commerce act should be speedily adopted which will give the Commission greater power, and which will expedite the final adjustment of cases decided by that Commission:

*Resolved*, That we urge the Senators and Representatives from the State of Indiana to do all in their power to advance on the Calendar and push to early favorable vote the amendments to the interstate-commerce act known as the Nelson bill in the Senate and the Corliss bill in the House, and that copies of this resolution be forwarded to the above-mentioned Senators and Representatives and to the chairmen of the Committees on Interstate Commerce in both Houses, and that a copy of this be forwarded to the executive committee of the Interstate-Commerce Law Convention at St. Louis, Mo.

C. J. MURPHY, *Secretary*.

## 14.

*Resolutions of Granite Manufacturers' Association of New England, favoring increasing the power of Interstate-Commerce Commission.*

[Presented by Mr. Gallinger, March 7, 1902; also by Mr. Elkins.]

BOSTON, *February 25, 1902.*

HON. JACOB H. GALLINGER, *Washington, D. C.*

DEAR SIR: At the annual meeting of the Granite Manufacturers' Association of New England, held at Barre, Vt., the 12th instant, the following resolution was unanimously adopted:

## RESOLUTION.

Whereas the interstate-commerce law declares that railway rates shall be just and reasonable and shall not discriminate between persons, localities, or commodities, and creates a Commission for the purpose of securing to the public the benefit of these provisions; and

Whereas that Commission, in view of the interpretation which the courts have put upon the original act, has not at the present time the necessary power to secure shippers and the public just, reasonable, and nondiscriminatory rates, and can not even exercise the authority which it did in this respect during the early years of its existence:

*Resolved*, That the "Act to regulate commerce" should be so amended as to give the Interstate-Commerce Commission the means to enforce the provisions of that act, and especially in the following particulars:

1. To give the Commission power, after it has upon formal complaint and hearing determined that a rate or a practice is in violation of law, to prescribe the thing which the carrier shall do to bring itself into conformity with the law. There is no way, in our opinion, in which the public can be secured in the enjoyment of a just rate except by compelling the carrier to make that rate.

2. To make the orders of the Interstate Commerce Commission effective of themselves, subject to the right of the carriers to review the lawfulness and reasonableness of these orders in the courts. Under the present system it has required on the

average more than three years to compel a railroad to obey an order of the Commission. After a shipper has tried his case before the Commission and obtained an order for relief he must still spend three years in litigation before that relief is available. No such system can in most cases be of any benefit to the public.

3. To require a uniform classification. The present power of the railways to change classifications at will puts the shipper completely at their mercy. This is illustrated by the action of the railways in putting in effect their new classification January 1, 1900.

4. To compel the railways to keep their accounts in a specified manner and to make those accounts open to Government inspection. This is no more than is now required in case of national banks, and would be the most effective means of preventing the payment of rebates and similar unlawful practices.

We believe these amendments are embodied in Senate bill No. 3575, introduced February 5, 1902, and House bill No. 8337, introduced January 9, 1902, and we urge upon our Senators and Representatives in Congress to give these bills their careful consideration and support.

Yours, respectfully,

WM. H. MITCHELL, *President.*

---

15.

*Petition of the Granite Manufacturers Association of New England, praying for the passage of Senate bill 3575.*

[Presented by Mr. Frye March 7, 1902.]

BOSTON, February 25, 1902.

Hon. WM. P. FRYE, *Washington, D. C.*

DEAR SIR: At the annual meeting of the Granite Manufacturers' Association of New England, held at Barre, Vt., the 12th instant, the following resolution was unanimously adopted:

RESOLUTION.

Whereas the interstate-commerce law declares that railway rates shall be just and reasonable and shall not discriminate between persons, localities, or commodities, and creates a Commission for the purpose of securing to the public the benefit of these provisions; and

Whereas that Commission, in view of the interpretation which the courts have put upon the original act, has not at the present time the necessary power to secure shippers and the public just, reasonable, and nondiscriminatory rates, and can not even exercise the authority which it did in this respect during the early years of its existence.

*Resolved*, That the "Act to regulate commerce" should be so amended as to give the Interstate Commerce Commission the means to enforce the provisions of that act and especially in the following particulars:

1. To give the Commission power, after it has upon formal complaint and hearing determined that a rate or a practice is in violation of law, to prescribe the thing which the carrier shall do to bring itself into conformity with the law. There is no way in our opinion in which the public can be secured in the enjoyment of a just rate except by compelling the carrier to make that rate.

2. To make the orders of the Interstate Commerce Commission effective of themselves, subject to the right of the carriers to review the lawfulness and reasonableness of these orders in the courts. Under the present system it has required on the average more than three years to compel a railroad to obey an order of the Commission. After a shipper has tried his case before the Commission and obtained an order for relief he must still spend three years in litigation before that relief is available. No such system can in most cases be of any benefit to the public.

3. To require a uniform classification. The present power of the railways to change classifications at will puts the shipper completely at their mercy. This is illustrated by the action of the railways in putting in effect their new classification January 1, 1900.

4. To compel the railways to keep their accounts in a specified manner and to

make those accounts open to Government inspection. This is no more than is now required in case of national banks and would be the most effective means of preventing the payment of rebates and similar unlawful practices.

We believe these amendments are embodied in Senate bill No. 3575, introduced February 5, 1902, and House bill No. 8337, introduced January 9, 1902, and we urge upon our Senators and Representatives in Congress to give these bills their careful consideration and support.

Yours, respectfully,

WM. H. MITCHELL,  
*President.*

*Petition on behalf of the Pacific Coast Lumber Manufacturers' Association, urging the passage of H. R. 8337, to enlarge the powers of the Interstate Commerce Commission.*

[Presented by Mr. Foster, of Washington, March 10, 1902.]

SEATTLE, WASH., *February 28, 1902.*

Hon. A. G. FOSTER, Hon. GEO. TURNER, Hon. W. L. JONES, Hon. F. W. CUSHMAN.

GENTLEMEN: At a meeting of this association, representing an annual output of 1,350,000,000 feet of lumber and 2,000,000,000 shingles, held in Tacoma on Wednesday, February 26, the following resolutions were adopted by unanimous vote:

"Resolved, That the interests of the country at large, and particularly of this State and of the lumber and shingle manufacturers, will be promoted by the passage of the bill now before Congress, enlarging the powers of the Interstate Commerce Commission.

"That the Pacific Coast Lumber Manufacturers' Association heartily indorses the pending measure, known as H. R. bill No. 8337.

"That the secretary is hereby directed to submit a copy of this resolution to each of the Senators and Congressmen from this State, and request that their influence be exerted in support of the measure."

In accordance with the foregoing instructions I urge upon you to give the measure your unqualified support. The present interstate-commerce law is practically a dead letter, as far as its enforcement is concerned, and shippers of lumber products from this State have and are suffering from the effects of the inability of the Commission to enforce the law, and the flagrant abuses consequent upon its nonenforcement.

Sincerely, yours,

VICTOR H. BECKMAN, *Secretary.*

17.

*Petition of the Granite Manufacturers' Association of New England, praying for legislation giving the Interstate Commerce Commission power to carry out the provisions of the interstate-commerce act.*

[Presented by Mr. Proctor, March 13, 1902.]

BOSTON, *February 25, 1902.*

Hon. REDFIELD PROCTOR, *Washington, D. C.*

DEAR SIR: At the annual meeting of the Granite Manufacturers' Association of New England, held at Barre, Vt., the 12th instant, the following resolution was unanimously adopted:

#### RESOLUTION.

Whereas the interstate-commerce law declares that railway rates shall be just and reasonable and shall not discriminate between persons, localities, or commodities, and creates a Commission for the purpose of securing to the public the benefit of these provisions; and

Whereas that Commission, in view of the interpretation which the courts have put upon the original act, has not at the present time the necessary power to secure shippers and the public just, reasonable, and nondiscriminatory rates, and can not even exercise the authority which it did in this respect during the early years of its existence;

*Resolved*, That the "act to regulate commerce" should be so amended as to give

the Interstate Commerce Commission the means to enforce the provisions of that act, and especially in the following particulars:

1. To give the Commission power, after it has upon formal complaint and hearing determined that a rate or a practice is in violation of law, to prescribe the thing which the carrier shall do to bring itself into conformity with the law. There is no way, in our opinion, in which the public can be secured in the enjoyment of a just rate except by compelling the carrier to make that rate.

2. To make the orders of the Interstate Commerce Commission effective of themselves, subject to the right of the carriers to review the lawfulness and reasonableness of these orders in the courts. Under the present system it has required on the average more than three years to compel a railroad to obey an order of the Commission. After a shipper has tried his case before the Commission and obtained an order for relief, he must still spend three years in litigation before that relief is available. No such system can, in most cases, be of any benefit to the public.

3. To require a uniform classification. The present power of the railways to change classifications at will puts the shipper completely at their mercy. This is illustrated by the action of the railways in putting in effect their new classification January 1, 1900.

4. To compel the railways to keep their accounts in a specified manner and to make those accounts open to Government inspection. This is no more than is now required in case of national banks, and would be the most effective means of preventing the payment of rebates and similar unlawful practices.

We believe these amendments are embodied in Senate bill No. 3575, introduced February 5, 1902, and House bill No. 8337, introduced January 9, 1902, and we urge upon our Senators and Representatives in Congress to give these bills their careful consideration and support.

Yours, respectfully,

WM. H. MITCHELL, *President.*

---

18.

*Petition of the Chamber of Commerce of Milwaukee, Wis., praying for the passage of the so-called Nelson-Corliss bill to amend the interstate-commerce act.*

[Presented by Mr. Quarles, March 17, 1902.]

CHAMBER OF COMMERCE,  
*Milwaukee, March 12, 1902.*

HON. J. V. QUARLES,  
*United States Senate, Washington, D. C.*

DEAR SIR: The following resolutions were adopted at a meeting of the board of directors of this chamber of commerce, held March 11, 1902:

"Whereas the Milwaukee Chamber of Commerce has heretofore placed itself on record on several occasions in favor of such amendment of the interstate-commerce act as will give it greater effectiveness; and

"Whereas a bill is now pending in Congress for this purpose, known as the Nelson-Corliss bill, designated in the House as H. R. 8337 and in the Senate as S. 3575: Therefore,

"Resolved, That the board of directors of the said chamber of commerce hereby respectfully requests the Senators and Representatives in Congress from this State to give the said bill their active support and to use their influence in every proper way to secure its early enactment.

"Resolved, That the secretary be requested to forward a certified copy of the foregoing preamble and resolution to each of the said Senators and Representatives."

Very truly, yours,

W. J. LANGSON, *Secretary.*

*Petitions of Blanton Milling Company, of Indianapolis; of the Harvest Queen Milling Company, of Elkhart; of the Bremen Roller Mills, of Bremen; of Igleheart Brothers, of Evansville; of Harris Milling Company, of Greencastle; of the Goshen Milling Company, of Goshen; of the Mayflower Mills, of Fort Wayne; of C. Tresselt & Sons, of Fort Wayne; of the Lebanon Roller Mills, of Lebanon; of the Gem Flouring Mill Company, of Rushville; of Willard Kidder, of Wabash; of Valley Roller Mills, of Connersville; of William Suckow, of Franklin, all in the State of Indiana, praying for the passage of the so-called Nelson-Corliss bill (S. 3575.)*

[Presented by Mr. Fairbanks, March 18, 1902.]

INDIANAPOLIS, IND., *March 12, 1902.*

HON. CHARLES W. FAIRBANKS,  
*United States Senate, Washington, D. C.*

DEAR SIR: We desire to respectfully call your attention to bill 3575, known as the Nelson-Corliss bill.

Doubtless you are aware that among the very fundamental industries of the country is the flour-milling business, which represents the largest investment of capital, with few exceptions, of any home industry. Furthermore, activity and prosperity in the flour-milling trade is productive of a corresponding prosperity amongst workingmen, farmers, merchants, manufacturers, bankers, and railroads.

It is an industry which is particularly rooted in all of its ramifications, directly or indirectly, with all classes of people. It is a representative American industry. The wheat grown in this country should be milled in America. Owing to the increased acreage in the wheat-growing country there has been a gradual increase in our wheat production. The most of this wheat should be milled in America, not foreign countries. The export of wheat should be in a less ratio than formerly, by reason of the increased milling facilities and capacity of this country and the increased activity on the part of the millers in building up a foreign trade for American flour. Unfortunately exports of wheat have increased at a greater ratio than the exports of flour. In fact, the increase in the exports of wheat in the past two years has been very noticeable and the ratio of flour exported, compared with wheat, has decreased abnormally. This, we believe, is contrary to the fundamental American idea of trade expansion. No country in the world is better equipped to mill its own wheat than America; hence the exportation of flour should be encouraged and aided by our governmental policies, commercial, legislative, as well as executive.

About three years ago the Central Traffic Association, also independent railway and fast freight lines, made the freight rate to the seaboard lower than on flour, the product of wheat. This was made, as claimed by the transportation companies, for the reason that it cost more to transport flour than it did wheat, but the difference in the cost, per admission of railway officials, was less than 1 cent per 100 pounds. The transportation companies, in defending their position, failed to tell your honorable Congressional committee that flour millers have to pay a charge of 1½ cents per 100 pounds over and above the published tariff rates for the privilege of stopping and milling the wheat in transit.

This charge is a heavy embargo on the milling trade for this privilege merely. As everyone connected with the millers as well as the transportation companies knows, this is far in excess of the actual cost of this milling-in-transit privilege. Several times statistics and facts have been produced proving the assertion of the transportation companies to be wrong. In fact, the transportation companies are showing a better net profit on the transportation of flour than on wheat. The milling industry of this country is suffering because of this added embargo on the transportation of flour. Steamship companies have made more favorable rates on the transportation of wheat because of the different and unlike conditions to any that railway companies have to meet.

The export trade of this country has been gradually and is now rapidly being diverted to foreign millers. Such millers are enabled to buy American wheat, lay it down at Liverpool, for illustration, mill it, and undersell us at a profit to such an extent that the export flour trade of America at this time is unprofitable. The primary cause of the distress in the flour-milling trade is due to this discrimination in freight rates. The millers of the United States do not ask for more favorable rates on flour than wheat, but simply for equal rates plus 1½ cents per hundred charged for milling in transit. Are you in favor of seeing justice done to the American millers? We believe, upon inquiry from men directly or indirectly interested in the export flour trade, that you will find the above statements verified. We therefore

respectfully ask you to consider our request for the support of the above-named measure, now pending in your branch of Congress.

We believe this measure will enlarge the executive and police powers of the Interstate Commerce Commission, so that discrimination in freight rates on commodities which should be carried on an equal rate will be obviated.

Kindly signify your intentions with regard to this measure.

Yours, truly,

BLANTON MILLING Co.  
Per H. D. YODER,  
*Secretary and Treasurer.*

ELKHART, IND., *March 13, 1902.*

Hon. C. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: There has been introduced in the Senate a bill designated as S. 3575 and in the House as H. R. 8337.

It is of the greatest importance that these bills, which are the same and are known as the Nelson-Corliss bill, be enacted into law.

No matter where the mill is located, or how small, all are affected directly or indirectly, and it is a question of life or death to the milling interests, and we therefore urgently request you to support Senate bill 3575.

Very respectfully,

THE HARVEST QUEEN MILLING Co.  
Per W. S. HAZELTON, *Manager.*

THE BREMEN ROLLER MILLS,  
*Bremen, Ind., March 13, 1902.*

C. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: All millers are quite familiar with the serious effect of the discrimination in freight rates against flour for export. For the purpose of correcting this evil it is proposed to amend the interstate-commerce law, giving the Commission power to enforce its findings. To this end there has been introduced in the House a bill designated as H. R. 8337 and in the Senate as S. 3575. It is of the greatest importance that these bills, which are the same, known as the Nelson-Corliss bill, be enacted into law. No matter where the mill is located, or how small, all are affected directly or indirectly, and it is a question of life and death to the milling interests, and I therefore urgently request that you support bill S. 3575 and hope to receive your favorable action on same.

These bills were prepared with much care and have had the personal attention of millers, so we know them to be what we want.

Yours, truly,

W. F. SCHILT.

EVANSVILLE, IND., *March 12, 1902.*

Senator FAIRBANKS, *Washington, D. C.*

HONORABLE SIR: The flour-milling interests of the United States are making a last life and death struggle to regain the export trade they have lost, and we ask your urgent support in the passing of the bill H. R. 8337, known as the Nelson-Corliss bill. This bill is with the view of correcting the evil of discriminating in freight rates against flour exports in favor of wheat.

Every intelligent person knows that no country can excel by exporting raw products, and if this policy were carried out in all other lines of manufacture our nation would become an inferior nation in time.

Can not you assist us in correcting this stupendous outrage upon a milling interest which represents \$300,000,000 invested capital and indirectly affects the farmer as well as the milling interests?

Yours, truly,

IGLEHEART BROTHERS.  
By A. W. IGLEHEART,  
*Secretary and Treasurer.*

GREENCASTLE, IND., *March 12, 1902.*MR. C. W. FAIRBANKS, *Washington.*

DEAR SIR: There has been introduced in the Senate a bill known as S. 3575, which, if passed, will greatly help out the winter-wheat millers. We most respectfully urge you to give this bill your support, as it is of vital importance to all of us.

Yours, truly,

HARRIS MILLING CO.,  
E. L. HARRIS, *Proprietor.*

GOSHEN, IND., *March 12, 1902.*Senator CHAS. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: We beg to call your attention to the bill S. 3575, and hope that it will have your valuable consideration and active support.

Some legislation of the sort is imperatively needed to prevent the total annihilation of the milling industries of this country by the action of the railway companies in making a much lower rate on the raw material, wheat, for export than on the manufactured product, flour.

The mills of the United States have outgrown this market and must have a foreign outlet. On even terms they can compete successfully with the foreign miller, but when our own railway companies discriminate in his favor it is impossible for flour manufactured in the United States to be exported at a profit.

Yours, very truly,

THE GOSHEN MILLING CO.,  
F. E. C. HAWKS, *President.*

FORT WAYNE, IND., *March 12, 1902.*Hon. C. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: We write you with a view of calling your attention to the Senate bill 3575, which has been drafted and introduced by practical millers with a view of overcoming the discrimination in freight rates against flour and in favor of wheat, as at present the railroads are carrying wheat to the seaboard at a considerably less price than they will carry the manufactured product, which puts the milling industry in this country at a very great disadvantage, as you can readily see, and hurts both the large and small miller from one end of the country to the other.

Trusting you may lend your best efforts to passing this bill, we beg to remain,

Very truly, yours,

THE MAYFLOWER MILLS.

FORT WAYNE, IND., *March 12, 1902.*Hon. CHAS. W. FAIRBANKS,  
*United States Senate, Washington, D. C.*

DEAR SIR: We respectfully beg to call your attention to the Nelson-Corliss bill, now pending, we believe, as S. 3575. The object is, as no doubt you are aware, to do away with unjust discrimination against millers in freight rates. Under existing conditions there is serious danger of crippling the milling industry of the United States, as foreigners now can buy American wheat, laid down in Europe, so low as to exclude our home millers to compete with the foreign miller, and all on account of discriminating freight rates. We earnestly beg of you to use your influence to have said S. 3575 become a law, and remain,

Yours, respectfully,

C. TRESSELT &amp; SONS.

THE LEBANON ROLLER MILLS,  
*Lebanon, Ind., March 12, 1902.*

Hon. C. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: We desire to call your careful attention to S. 3575, a bill to increase the powers of the Interstate Commerce Commission, which we believe will be of great advantage to the Western millers doing an export business, and also to us smaller millers, by relieving us from the crushing influence of the great millers, aided by the advantage given them by the railways.

Hoping this bill will have your favorable consideration, we are,

Truly, yours,

MEANS &amp; WITT.



RUSHVILLE, IND., *March 12, 1902.*Hon. C. W. FAIRBANKS, *Washington, D. C.*

SIR: The passage of S. 3575 is of the greatest importance to the millers of this and adjoining States. The discrimination in rates is disastrous to the millers of this State, especially those of smaller capacity. The large mills of the Northwest get advantages in rates, and the grain shippers through this country get a lower rate on their shipments than the miller gets on grain products, so we have to compete with both the Northwest mills and with the grain shippers of this State, thus practically barring us from the markets. The flour-milling industry seems to be a necessity, yet not one in fifty succeed in operating on a profitable basis, while many are closed down, so we feel that such legislation as will encourage the manufacturing of flour is a necessity, and respectfully ask you to look with favor on S. 3575 as a means to an end so necessary to the largest single industry in this State outside of railroads.

Respectfully,

THE GEM FLOURING MILL COMPANY,  
Per C. B. RILEY, *Manager.*

TERRE HAUTE, IND., *March 12, 1902.*Hon. C. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: The effect of the discrimination in freight rates against flour for export has been so disastrous to the millers in this country, especially in the winter-wheat belt, I feel that you will excuse me for calling your serious attention to the bill S. 3575, known, I believe, as the Nelson-Corliss bill. If this bill can be passed and its provisions enforced, I believe it will help us to again compete with the foreign millers.

Whatever you can do to insure the passage of this bill will be highly appreciated by

Yours, truly,

WILLARD KIDDER.

VALLEY ROLLER MILLS,  
*Connersville, Ind., March 12, 1902.*

Hon. C. W. FAIRBANKS,  
*United States Senate, Washington, D. C.*

DEAR SIR: No doubt you have before this been made familiar with discrimination in freight rates against flour for export. Such discrimination is working a great injury to the milling business, and we therefore beg leave to ask your kind assistance in passing bill S. 3575.

Yours, very respectfully,

UHL &amp; SNIDER.

FRANKLIN, IND., *March 12, 1902.*Senator FAIRBANKS, *Washington, D. C.*

DEAR SIR: No doubt you are quite familiar with the serious effect of the discrimination in freight rates against flour for export. We believe that bill S. 3575 will remedy this, and earnestly request you to support this bill. We believe if you will take this matter up at once and push it to the extent of your ability it will be enacted into law and afford relief to the millers. It is a question of life and death to the milling interests.

Yours, very truly,

WM. SUCKOW,  
Per WEAVER.

## 20.

*Resolution of Eastern Washington and Northern Idaho Lumber Manufacturers' Association favoring legislation to increase the power of the Interstate Commerce Commission.*

[Presented by Mr. Heitfeld March 19, 1902.]

SPOKANE, Wash., March 10, 1902.

HON. HENRY HEITFELD, HON. FRED C. DUBOIS, HON. THOS. L. GLENN,  
Washington, D. C.

GENTLEMEN: At a meeting of this association, representing an annual output of 250,000,000 feet of lumber and 500,000,000 shingles, held in this city March 8, the following resolutions were adopted by unanimous vote:

"Resolved, That the interests of the entire country and particularly the States of Washington and Idaho, and the lumber and shingle industries, will be materially advanced by the passage of the bill now before Congress enlarging the powers of the Interstate Commerce Commission.

"That the Eastern Washington and Northern Idaho Lumber Manufacturers' Association heartily indorse the pending measure known as House bill No. 8337.

"That the secretary is hereby directed to submit a copy of this resolution to each of the Senators and Congressmen from the States of Washington and Idaho, and request that their influence be exerted in support of the measure."

Regarding the above instructions, I beg of you to give the measure your unqualified support. The present interstate-commerce law, as it now stands, is a dead letter as far as its enforcement is concerned, and shippers of lumber products from our States have and are suffering from the effects of the inability of the Commission to enforce the law, and the flagrant abuses consequent upon its nonenforcement.

Yours, truly,

GEO. W. HOAG, *Secretary.*

## 21.

*Petitions of Coppes Brothers & Zook, of Nappanee; of Manitau Flouring Mills, of Rochester; of Winter Wheat Millers' League, of Indianapolis, all in the State of Indiana, praying for certain amendments to the interstate-commerce law.*

[Presented by Mr. Fairbanks, March 21, 1902.]

NAPPANEE, IND., March 14, 1902.

HON. CHAS. W. FAIRBANKS,  
Washington, D. C.

DEAR SIR: For the last several years the millers of our vicinity have experienced a great deal of trouble to hold our export flour trade, and in spite of our utmost endeavor our own trade has almost entirely ceased, excepting at an actual loss.

We have been convinced this comes almost entirely out of freight discrimination in rates on flour for export. We are advised by the Winter Wheat Millers' League that House bill No. 8337 and Senate bill No. 3575 will correct this evil if adopted. If so, it will be worth a great deal of money to the mills of this State, and especially to Goshen and our own mill, who do considerable exporting. If after a study of these bills you find them otherwise unobjectionable, we will be very thankful indeed to know that you support the same.

Yours, respectfully,

COPPES BROS. & ZOOK.

ROCHESTER, IND., March 14, 1902.

HON. C. W. FAIRBANKS, Washington, D. C.

DEAR SIR: There has been introduced in the Senate a bill designated as Senate bill 3575, known as the Nelson-Corliss bill, which I would be pleased to have you support if you can see your way clear so to do. The serious effect of the discrimination in freight rates against flour for export is about to wipe out of existence the small mills of this country. There is no business that represents the capital of the mills of this country that pays so small a profit. Kindly give this matter your careful consideration, and, if possible, assist in giving us the help we pray for.

Yours, most truly,

R. C. WALLACE.

WINTER WHEAT MILLERS' LEAGUE,  
Indianapolis, Ind., March 15, 1902.

Hon. C. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: In the name of the millers of the United States, I beg to call your attention to Senate bill 3575.

Newspaper dispatches announce that a very strong railroad lobby is now in Washington, and that one of the representatives of that interest has announced that they did not purpose that any legislation along the lines proposed in bill No. 3575 should pass.

As secretary of the Winter Wheat Millers' League, I am constrained to write you frankly as to the situation the miller is in, and to say that politically the Republican party, if relief is not afforded our industry, will feel its effect.

The millers of this country have sufficient capacity to grind into flour every bushel of wheat grown in this country and with proper treatment at the hands of the transportation companies could export all of any surplus in the form of the manufactured product. By this I mean the same rate as is accorded to wheat. At present the shippers of wheat are receiving a discriminating rate which means a difference of 5 cents to 10 cents a barrel against flour. Any of our large mills would be glad to run night and day on a margin of 10 cents a barrel or less. As it is they are not able to export any at a profit. Further, if this wheat was ground by our own mills, instead of sending it abroad to be ground, it would mean from \$8,000,000 to \$10,000,000 additional wages for our own laborers. Again, under such conditions the farmer would get his mill feed much cheaper, and it would yield them a saving of several million dollars per annum. The present unfavorable condition of our flour mills is the result of this discrimination, and the transportation companies have gone the limit, in my judgment, and unless relief is given by this Congress the second largest industry in our country will be practically ruined.

Politically fully 90 per cent of our millers are Republicans; but there will be formed an organization among the millers, who number over 16,000, who will act independent in politics. Every mill, nearly, in the country is a political headquarters, and their influence on their own and with the farmers will mean enough votes to hold the balance of power in a large number of Western States.

I am writing you frankly, for I am certain that you are not fully informed as to the situation, and it is, in my judgment, to your interest to know it.

I shall ask that you give these points the consideration they deserve, and that you aid us in getting a hearing from the committee having the bill in charge, and that you also give it your unqualified support.

Thanking you in advance for your support and trusting to be honored with a reply,

I am, sir, yours, respectfully,

E. E. PERRY, *Secretary.*

---

22.

*Petition of the Merchants and Manufacturers' Association of Milwaukee, Wis., and others, praying for the passage of the so-called Nelson-Corliss bill to amend the interstate-commerce law.*

[Presented by Mr. Quarles, March 25, 1902.]

MILWAUKEE, WIS., March 17, 1902.

Hon. J. V. QUARLES, *Washington, D. C.:*

DEAR SIR: At a meeting of the board of directors of the Merchants and Manufacturers' Association held on Friday, the 14th instant, the following preamble and resolution were unanimously adopted:

"Whereas recent decisions of the Federal courts have rendered the interstate-commerce law ineffective in the protection of the public from unreasonable and discriminative rates imposed by the common carriers of the country, which was the purpose of its enactment; and

"Whereas a bill has been introduced in Congress, prepared under the direction of the executive committee of the interstate-commerce law convention, known as the Nelson-Corliss bill, designated as House bill 8337 and Senate bill 3575, intended to remedy the defects found to exist in the present law: Therefore,

*Resolved*, That the Merchants and Manufacturers' Association of Milwaukee hereby

indorses said bill and respectfully requests the Senators and Representatives in Congress from this State to exert their influence in every proper way to secure its enactment into law, and to obtain such precedence for its consideration over other pending measures as its great importance demands.

Kindly give this matter your careful consideration, and oblige,

Yours, very sincerely,

L. C. WHITNEY, *Secretary.*

---

23.

*Petition of the Wisconsin Retail Lumber Dealers' Association, praying for the passage of the so-called Nelson-Cortiss bill to amend the interstate-commerce law.*

[Presented by Mr. Quarles, March 25, 1902.]

SAUK CITY, WIS., *March 13, 1902.*

Senator JOSEPH V. QUARLES,  
*Washington, D. C.*

DEAR SIR: At the annual meeting of the Wisconsin Retail Lumber Dealers' Association, held in the city of Milwaukee February 19, 1902, the following preamble and resolution was unanimously adopted:

"Whereas a bill, prepared under the direction of the executive committee of the interstate-commerce law convention held in St. Louis November 20, 1900, has been introduced in both Houses of the Congress of the United States, designated as House bill 8337 and Senate bill 3575, and known as the Nelson-Cortiss bill, to so amend the interstate-commerce act as to give it the effectiveness which characterized its operation until the Commission was divested of the authority which it was understood to possess by recent decisions of the Federal courts: Therefore,

"Resolved, That the Wisconsin Retail Lumber Dealers' Association, in convention assembled at the city of Milwaukee, February 19, 1902, does hereby indorse the said bill and respectfully request the honorable Senators and Representatives in Congress from this State to give it their support and exert their influence to the utmost, in every proper way, to insure its early enactment."

Hoping that your personal views are in accord with the above resolution and request of your constituents, I remain,

Yours, respectfully,

PAUL LACHMUND, *Secretary.*

---

24.

*Memorial of the legislature of the State of Minnesota, urging the passage of S. 3575.*

[Presented by Mr. Nelson, April 1, 1902; also by Mr. Clapp.]

Whereas the power and right to "regulate commerce among the several States," given by the Constitution to Congress, has, by repeated decisions of the Supreme Court, been held to include the right to fix reasonable maximum rates for common carriers engaged in the transportation of such commerce; and

Whereas the Congress attempted to delegate its power in this regard to the Interstate Commerce Commission, and attempted to give said Commission the necessary authority for that purpose; and

Whereas the Supreme Court of the United States has recently decided that the act creating the said Interstate Commerce Commission is seriously defective and incomplete, and that while said act confers on said Commission the power to declare existing rates unreasonable, it does not give said Commission the power to prescribe a tariff of reasonable rates to replace those found to be unreasonable; and

Whereas since said decision there is no tribunal having the power to correct any unreasonable rates or classifications of freights in the domain of interstate commerce; and

Whereas one of the most important functions of the Government is thus suspended, and immediate legislation is imperatively necessary to clothe said Interstate Commerce Commission with adequate power to regulate interstate commerce and to prescribe reasonable maximum rates for the transportation thereof, and the State of

Minnesota as well as the entire Northwest is vitally interested in the enactment of such a law; and

Whereas the bill (S. 3575) introduced February 5, 1902, in the Senate of the United States by Senator Knute Nelson, contains all of the provisions necessary to invest said Interstate Commerce Commission with the powers needed for the purposes aforesaid, and said bill is therefore one of the most important bills now before Congress; Therefore, be it

*Resolved by the legislature of the State of Minnesota,* That we heartily indorse said bill (S. 3575) and respectfully urge the early passage of the same by the Congress of the United States; and be it

*Further resolved,* That we indorse and approve the action of Senator Nelson in introducing and advocating said bill.

*Resolved further,* That a copy of this memorial be sent by the secretary of state to each member of Congress from Minnesota and to the President of the Senate of the United States.

Approved March 10, 1902.

STATE OF MINNESOTA, *Department of State:*

I, P. E. Hanson, secretary of state of the State of Minnesota, do hereby certify that the above and foregoing is a true and correct copy of S. F. No. 54, adopted at the extra session of the legislature, 1902.

In witness whereof I have hereunto set my hand and caused the great seal of the State to be affixed, at the capitol in St. Paul, this 27th day of March, A. D. 1902.

[SEAL.]

P. E. HANSON, *Secretary of State.*

---

25.

*Petitions of the National Hay Association, of Winchester; of Hydraulic Roller Mills, of Milton; of W. H. Small & Co., of Evansville; of City Roller Mills, of Jeffersonville, praying for certain amendments to the interstate-commerce law.*

[Presented by Mr. Fairbanks, April 4, 1902.]

WINCHESTER, IND., *March 22, 1902.*

*To the Members of Congress:*

I am directed by the board of directors of the National Hay Association, an organization composed of about seven hundred shippers and receivers, doing business in various parts of the country, to direct your attention to the present ineffectiveness of the decrees of the Interstate Commerce Commission; and also, the chaotic state of the railroad situation, by reason of the judicial interpretation which has been placed upon the interstate-commerce act of 1887.

There is now pending in the House a bill which was introduced by Representative Corliss, and a like bill in the Senate, introduced by Senator Nelson, the provisions of which appear to the directors of this association to be fair and reasonable, not prejudicial to the interests of the carriers, but advantageous to shippers and receivers.

As an association we indorse this act, and desire to urge upon you the necessity of a prompt amendment, either by means of the bill referred to or in some other manner of the interstate-commerce act.

I have the honor to remain,  
Very respectfully, yours,

P. E. GOODRICH, *Secretary-Treasurer.*

---

EVANSVILLE, IND., *March 25, 1902.*

Hon. CHAS. M. FAIRBANKS, *Washington, D. C.*

DEAR SIR: We wish to earnestly request you to give your full support to the Corliss bill, recently introduced into the House of Representatives by Representative Corliss, of Michigan.

Yours, truly,

W. H. SMALL & Co.

JEFFERSONVILLE, IND., *March 15, 1902.*Hon. C. W. FAIRBANKS, *Washington, D. C.*

DEAR SIR: There has been introduced in the Senate a bill designated as Senate bill 3575. We ask you to kindly support this bill, as it is of the highest importance to millers in the way of again securing fair profits on flour.

The discrimination of freight rates has been a very hard proposition for millers to overcome, and we therefore ask you to kindly support bill.

Thanking you in advance, we are,

Yours, truly,

EBERTS & BRO.

MILTON, IND., *March 27, 1902.*Senator FAIRBANKS, *Washington, D. C.*

DEAR SIR: All millers operating in the State of Indiana are aware of the serious effect of discrimination in freight rates against flour offered for export; therefore the milling has suffered greatly in the past. We note that a bill has been introduced in the Senate as S. 3575 which we believe will correct the evil of discriminating against flour offered as export. We believe it is a question of life and death to the milling interest if the above is not passed. We trust, therefore, that you can and will give the bill your hearty support.

We remain, yours, very truly,

J. NORTH & SON,  
D. B. N.

26.

*Papers pertaining to S. 3575, being an act to amend an act entitled "An act to regulate commerce."*

[All presented by Mr. Burrows, April 7, 1902.]

GRAND RAPIDS, MICH., *February 25, 1902.*Mr. JULIUS C. BURROWS, *Washington, D. C.*

DEAR SIR: There is a bill before Congress to amend the interstate-commerce act so as to enable the commissioners to enforce their decisions. It is House bill No. 8337.

The purpose of said bill is to confer upon the Commission such authority as it actually exercised in enforcing its decisions, until the Supreme Court held that no such authority was conferred by the interstate-commerce act. The bill does not impose any hardship upon the carrier nor enlarge the powers of the Commission with respect to rate changing, but simply gives the Commission power to enforce decisions, which, although generally respected by the railway companies, may in certain cases under the present provisions of the act be disregarded.

We believe this bill is worthy of your support and should be passed.

Yours, very truly,

FULLER & RICE LUMBER AND MANUFACTURING COMPANY,  
A. P. IRISH, *Vice-President.*

DETROIT, MICH., *March 27, 1902.*Hon. J. C. BURROWS, *Washington, D. C.*

MY DEAR SIR: As large shippers of hay, we are very much interested in the bill of Representative Corliss to amend the interstate-commerce act, so that the decrees of the Commission may be made effective, and we earnestly hope you will use your efforts favorably toward this act.

Yours, truly,

JOHN L. DEXTER & Co.

HOLLY, MICH., *March 13, 1902.*

Hon. J. C. BURROWS,

*United States Senate, Washington D. C.*

DEAR SIR: We write to request that you lend your aid in the support of bill (S. 3575) to correct the evil of discrimination in freight rates against flour for export.

This is such a serious question to all small mills in the country that we hope

will take it upon yourself to help in every way to have this bill enacted into a law. Unless this happens it will be necessary very soon for all small millers to get out of the business.

We feel sure that you are interested and that we may depend upon you in this hour for final action. Trusting that this bill will have your careful personal attention, we are.

Yours, truly,

HOLLY MILLING COMPANY,  
CHAS. H. S. POOLE.

GREENVILLE, MICH., *March 13, 1902.*

Hon. J. C. BURROWS, *Washington, D. C.*

DEAR SIR: We write to ask you if you can not, in the interest of the milling business in the United States, especially in Michigan, give your earnest support to the bill known as the Nelson-Corliss bill (S. 3575), which is proposed to amend the interstate-commerce law.

At the present time there is a great discrimination in the freight rates between wheat and flour for export, in favor of the wheat and detrimental to the flour and the milling interest. The milling interest in this country has been badly handicapped for the last few years by reason of the great difference in the rates of freight between wheat and flour, and it has nearly killed the milling business in Michigan, as well as in the other States, and if the present condition continues it will be a great loss to the country at large, as now the advantage is all in favor of the foreign millers and against the American millers.

The bill mentioned above is to correct this evil, and we wish you would do all you can to get it enacted, and greatly oblige,

Yours, truly,

E. MIDDLETON & SONS.

HARBOR BEACH, MICH., *March 18, 1902.*

Hon. JULIUS C. BURROWS,  
*Senate Chamber, Washington.*

DEAR SIR: We are very much interested in the bill S. 3575, and would be very much pleased to have you vote for it and do what you can for its passage.

Yours, truly,

THE HURON MILLING COMPANY,  
BELA W. JENES, *Secretary.*

GRAND RAPIDS, MICH., *March 15, 1902.*

Mr. J. C. BURROWS,  
*Senate Chamber, Washington, D. C.*

DEAR SIR: I have previously written you as regards to the dullness in the milling trade all over the United States, especially in Michigan. In this regard I would call your attention to a bill which has been introduced as Senate bill No. 3575, and House bill 8337, also known as the Nelson-Corliss bill. It is certainly of the greatest importance that this bill be enacted into a law and see if the milling interest can not be benefited. It is a bill to amend the interstate-commerce law, giving the Commission power to enforce its findings.

Hope that you will not only see your way clear to vote for this bill, but that you will give it your moral influence. We know if you and Senator McMillan will put your shoulders to the wheel the bill will pass.

Kindly do the best you can for it, and oblige,

Very respectfully,

C. G. A. VOIGT.

ALMA, MICH., *March 22, 1902.*

Hon. JULIUS C. BURROWS,  
*Washington, D. C.*

DEAR SIR: I wish to call your attention to a bill which I understand is now before the Senate, known as S. 3575, which, if passed, will enlarge the powers of the Interstate Commerce Commission. It is a well-known fact that the railroads are dis-

criminating in their freight rates against mill products and against products in the line of agriculture—that this condition of affairs tends to restrict the trade of milling institutions, both large and small.

I hope that you will work and vote for this bill, as its passage will materially help the milling interests in this State.

I remain, respectfully, yours,

ALMA ROLLING MILLS.  
F. G. SCOTT.

ALBION, March 14, 1902.

Hon. JULIUS C. BURROWS:

At the meeting of the Albion Farmers' Club on the above-mentioned date the following resolution was passed:

"Resolved, That as a club we approve the Nelson-Corliss bill and desire you, as our Representative in Congress, to use all proper means to secure its passage to the end that it shall become the law of the land."

JACOB WARTMAN, *President*.  
MRS. S. A. BASCOM, *Secretary*.

WHITE PIGEON, MICH., March 13, 1902.

Hon. J. C. BURROWS, *Washington, D. C.*

DEAR SIR: It is generally supposed, and undoubtedly a fact, the manufacturing industries of our country never were as prosperous and making the money they are at present. All are prosperous with one great exception. This one exception mentioned, "the flour-milling industry," with the greatest investment in plants and working capital, giving employment to more labor than any single manufacturing industry in the United States, does not share in the general prosperity. It has made no money for some years past, matters are growing worse, and it is now nearing the point where it is a struggle for existence.

It is hardly necessary to call your attention to this fact. Your knowledge of the industries of the country and their condition will tell you this, but with a slight investigation of the condition of the mills in your own State, nay, not necessary to go beyond the limits of your own town, to have this assertion verified.

There is a cause for all this, and it rests in the discrimination in freight rates against flour for export. Wheat, our raw material, is carried on the same trains for the same vessels for export, always for less and often for less than one-half the amount which mills are compelled to pay on the manufactured product.

For the purposes of correcting this evil it is proposed to amend the interstate-commerce law, giving the Commission power to enforce its findings. To this end there has been introduced in the Senate a bill designated as S. 3575, which I trust you will find consistent to give your earnest support and best efforts to become a law.

Very respectfully, yours,

R. J. HAMILTON.

THE MERCHANTS AND MANUFACTURERS' EXCHANGE,  
*Detroit, April 5, 1902.*

Whereas there is an extensive demand on the part of the public for some legislation which shall regulate the rates of freight and classification of merchandise charged by the transportation companies of the country, and which shall clothe the Interstate Commerce Commission with the power to enforce its decisions and to make such regulations as shall protect the shippers from extortion at any time; and

Whereas we believe that competition among the railroads of the United States has practically ceased, by reason of consolidations and agreements among themselves, and so destroyed the hope of relief by that means; Therefore, be it

Resolved, By the board of directors of the Merchants' and Manufacturers' Exchange of Detroit, Mich., representing nearly 200 of the largest shippers in our city, that we indorse the bill introduced by the Hon. John B. Corliss, member of Congress of this district, known as H. R. 8337, and the one introduced by Senator Nelson, known as S. 3675, and respectfully request all the Senators and Representatives from Michigan to support the passage of same at the proper time.

JAS. INGLIS, *President*.  
WALTER S. CAMPBELL, *Secretary*.



## 27.

*Resolution adopted by the Commercial Club of Belleville, Ill., favoring the enactment of legislation to regulate interstate commerce.*

[Presented by Mr. Cullom, April 23, 1902.]

BELLEVILLE, ILL., April 9, 1902.

Hon. S. H. CULLOM, Washington, D. C.

DEAR SIR: The following resolution will explain itself:

"Resolved by the Belleville Commercial Club, of the city of Belleville, Ill., That in our judgment the present interstate commerce law, as interpreted by the Supreme Court, is insufficient and practically inoperative for the purpose for which it was framed. We therefore urge upon our Senators and Representatives the importance of doing everything in their power to further the passage of H. R. 8337, S. 3575, to amend the act to regulate commerce. Belleville, Ill., April 7, 1902."

Please give this a part of your valuable time and attention.

Very respectfully,

W. F. KIRCHER, Secretary.

## 28.

*Resolution of Business Men's Association of Davenport, Iowa, favoring passage of S. 3575.*

[Presented by Mr. Dolliver, April 9, 1902.]

DAVENPORT, IOWA, March 18, 1902.

Hon. J. P. DOLLIVER, Washington, D. C.

SIR: The following resolution, passed at our last meeting, is explanatory of itself:

Resolved, That the Davenport Business Men's Association heartily indorse the bill known as S. 3575 and H. R. 8337, an act to regulate commerce; and request our representatives to use their best endeavors to have the bill passed. Any consideration you may give the matter will greatly oblige,

Yours, respectfully,

DAVENPORT BUSINESS MEN'S ASSOCIATION,  
M. BUNKER, Secretary.

## 29.

*Petition by the Boston Fruit and Produce Exchange, of Boston, Mass., praying that Congress shall enact such legislation as will enable the Interstate Commerce Commission to enforce their findings.*

[Presented by Senator Hoar, April 10, 1902.]

At a meeting of the board of directors of the Boston Fruit and Produce Exchange held Tuesday, April 8, 1902, it was voted:

"That the board respectfully petition the Congress of the United States to enact such legislation as will enable the Interstate Commerce Commission to enforce their findings, and that a copy of this resolution be sent to each of our Senators and Representatives in Congress."

A true copy.

Attest:

B. F. SOUTHWICK, Secretary.

Hon. GEORGE FRISBIE HOAR,  
Washington, D. C.

30.

*Petitions of Puritan Bed Spring Company et al., praying for certain amendments to the interstate commerce law.*

[Presented by Mr. Fairbanks, April 10, 1902.]

INDIANAPOLIS, IND., March 28, 1902.

The Furniture Manufacturers' Association of Indianapolis, Ind., at its last regular meeting, held March 10, 1902, adopted the following resolution:

"Resolved, That we, the Furniture Manufacturers' Association of Indianapolis, Ind., do heartily indorse the provisions of House bill 8337 and Senate bill 3575, known as the "Nelson-Corliss bill," and we do hereby urge our representatives in Congress to use their best endeavors to promote this bill and to secure its passage."

PURITAN BED SPRING COMPANY,  
Per M. F. SHAW, *Treasurer*,  
BASS & WOODWORTH,  
Per W. H. BASS,  
WESTERN FURNITURE COMPANY,  
W. L. HAGEDON, *President*,  
*Committee.*

HON. JESSE OVERSTREET, *Representative Seventh District.*

HON. C. W. FAIRBANKS, *Senator from Indiana.*

HON. A. J. BEVERIDGE, *Senator from Indiana.*

31.

*Memorial of the Board of Trade of Grand Rapids, Mich., and Merchants and Manufacturers' Exchange of Detroit, Mich., praying for the passage of the so-called Nelson-Corliss interstate-commerce bill.*

[Presented by Mr. McMillan, April 14, 1902.]

DETROIT, April 5, 1902.

Whereas there is an extensive demand on the part of the public for some legislation which shall regulate the rates of the freight and classification of merchandise charged by the transportation companies of the country and which shall clothe the Interstate Commerce Commission with the power to enforce its decisions and to make such regulations as shall protect the shippers from extortion at any time; and

Whereas we believe that competition among the railroads of the United States has practically ceased by reason of consolidations and agreements among themselves and so destroyed the hope of relief by that means: Therefore, be it

*Resolved by the board of directors of the Merchants and Manufacturers' Exchange of Detroit, Mich.* (representing nearly 200 of the largest shippers in our city), That we indorse the bill introduced by the Hon. John B. Corliss, M. C., of this district, known as H. R. No. 8337, and the one introduced by Senator Nelson, known as S. No. 3575, and respectfully request all the Senators and Representatives from Michigan to support the passage of same at the proper time.

JAS. INGLIS, *President.*

WALTER S. CAMPBELL, *Secretary.*

Whereas it is believed the interests of all shippers and of all communities, except perhaps a favored few, will be promoted by equal freight charges and privileges to all; and

Whereas the Interstate Commerce Commission has been deprived, by judicial interpretations, of the authority to regulate rates and to enforce its decisions which it originally exercised as intended by the framers of the act creating it: Therefore,

*Resolved by the Grand Rapids Board of Trade*, That we hereby indorse and approve the so-called Corliss-Nelson bill, now pending in Congress, the purpose of which is to restore to the Commission such authority as it actually exercised from the time of its organization until the Supreme Court denied that such authority was conferred upon it. Particularly do we indorse these sections of the bill intended to make the orders

of the Commission immediately operative and to provide for the enforcement of obedience to the orders of the Commissioners.

*Resolved further*, That copies of this resolution be forwarded to Senators James McMillan and J. C. Burrows and to each Representative from Michigan in the National Congress.

I hereby certify that the foregoing is a true and correct copy of preamble and resolutions duly adopted by the board of directors of the Grand Rapids Board of Trade this 8th day of April, 1902.

[SEAL.]

H. D. C. VAN ASMUS, *Secretary*.

32.

*Resolution of the Merchants' Exchange of the city of Buffalo, State of New York, favoring the passage of Senate bill No. 3575 and House bill No. 8337.*

[Presented by Mr. Platt, of New York, April 14, 1902.]

The original interstate-commerce act has been interpreted by the United States Supreme Court in various cases, so as to greatly restrict the powers of the Commission to effectively accomplish the results intended by such act. Bills have been introduced in the Senate and House, known as Senate bill No. 3575 and House bill No. 8337, which are identical, and having for their object to confer upon the Interstate Commerce Commission authority to make effective its administrative orders and giving to the defendants the right of appeal to the United States courts, and which continue to limit the authority of the Commission to the correction of rates when it appears after investigation that such rates are unreasonable and discriminative; and these bills also repeal the provision of the present interstate-commerce act relating to imprisonment for violation of said act, and in place thereof providing for fines to be imposed for violations thereof; these amendments we believe to be essential for the proper administration of the duties and purposes of the Interstate Commerce Commission: Now, therefore,

The Buffalo Merchants' Exchange urges upon the Interstate Commerce Committee of the Senate favorable consideration of Senate bill No. 3575, and upon the Interstate and Foreign Commerce Committee of the House favorable consideration of House bill No. 8337, having for their purpose the amendment of the interstate-commerce act, to the end that favorable action may be taken thereon at this session of Congress; and that the Secretary be directed to transmit a copy of this resolution to the respective committees of the Senate and House of Representatives, the Senators from the State of New York and the Representatives in Congress from the county of Erie, requesting their cooperation in securing such legislation.

A true copy.

F. HOWARD MASON, *Secretary*.

33.

*Resolution adopted by the Utah Wool Growers' Association, indorsing amendment to the interstate-commerce act proposed by Congressman J. B. Corliss.*

[Presented by Senator Rawlins April 15, 1902.]

Whereas the operations of the Interstate Commerce Commission under the present law are absolutely worthless, for the reason that they have no power to enforce their decisions; and

Whereas there has been introduced in the House of Representatives of the Fifty-seventh Congress by Congressman J. B. Corliss, of Michigan, a bill amending the interstate-commerce act, correcting the evils, and giving the Commission power to enforce its rulings, which has the unqualified indorsement of the Interstate Commerce Commission and shippers at large throughout the country; and

Whereas the live-stock interests of the United States are heavy shippers and therefore interested in anything pertaining to or governing transportation: Therefore, be it

*Resolved*, That the Utah Wool Growers' Association in convention assembled urge

the members of Congress to vote for the passage of this amendment to the interstate-commerce act: And be it further

*Resolved*, That the secretary of this association is hereby instructed to send copies of this resolution to the Committee on Interstate Commerce of the House, and also to write personal letters to the members of Congress and Senators from this State urging that they work for the passage of this measure.

E. H. CALLESTER, *Secretary*.  
JESSE M. SMITH.

---

34.

*Resolution adopted by the Utah Cattle Growers' Association, indorsing the amendment to the interstate-commerce act proposed by Congressman J. B. Corliss.*

[Presented by Senator Rawlins, of Utah, April 15, 1902.]

Whereas the operations of the Interstate Commerce Commission under the present law are absolutely worthless, for the reason that they have no power to enforce their decisions; and

Whereas there has been introduced in the House of Representatives of the Fifty-seventh Congress by Congressman J. B. Corliss, of Michigan, a bill amending the interstate-commerce act, correcting the evils, and giving the Commission power to enforce its rulings, which has the unqualified indorsement of the Interstate-Commerce Commission and shippers at large throughout the country; and

Whereas the live stock-interests of the United States are heavy shippers and therefore interested in anything pertaining to or governing transportation: Therefore, be it

*Resolved*, That the Utah Cattle Growers' Association in convention assembled urge the members of Congress to vote for the passage of this amendment to the interstate-commerce act; and, be it further

*Resolved*, That the secretary of this association is hereby instructed to send copies of this resolution to the Committee on Interstate Commerce of the House, and also to write personal letters to the members of Congress and Senators from this State urging that they work for the passage of this measure.

\_\_\_\_\_  
*President Utah Cattle Growers' Association.*  
WESLEY K. WALTON,  
*Secretary.*

---

35.

*Petition of lumber manufacturers for the enlargement of the power of the Interstate Commerce Commission.*

[Presented by Mr. Clapp April 28, 1902, also by Mr. Elkins, also by Mr. Cockrell.]

*Resolution to members of Congress from board of directors of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers:*

At the fourteenth annual convention of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers, held at Kansas City, Mo., January 28-29, 1902, the following resolution was unanimously adopted:

*Resolved*, That the Missouri, Kansas, and Oklahoma Association of Lumber Dealers hereby invokes the aid of Senators and Representatives in Congress in securing the passage of laws enlarging the powers of the Interstate Commerce Commission so as to give that body increased powers.

The Missouri, Kansas, and Oklahoma Association of Lumber Dealers has a membership of 1,500, and represents in this matter the interests of the legitimate lumber trade of the Southwest. The lumber dealers of this territory have suffered from unjust discriminations on the part of the railroad companies at various times, and have been unable to secure any redress through the Interstate Commerce Commission owing to its present limited powers to enforce its rulings.

They, the lumber dealers represented by this association, feel that in justice to the business interests of the country in general, and to the interests of the lumber trade in particular, action should be taken at the present session of Congress to give the Interstate Commerce Commission increased powers, and, further, that H. R. 8337 and

S. 3575, known as the "Nelson-Corliss bill," will, if passed, give the Interstate Commerce Commission the necessary power to enforce its rulings.

Therefore the board of directors of this association, acting for and in behalf of the lumber trade of the Southwest, does hereby earnestly and heartily indorse the "Nelson-Corliss bill," and requests that the Senators and Representatives representing the Southwest will use their best endeavors and influence in assisting in the passage at the present session of Congress of the bill above referred to.

The president and secretary of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers are hereby authorized and instructed to affix their signatures to this document, and the secretary is hereby instructed to forward a copy of same to each Senator and Representative from Missouri and Kansas, and to such other Senators and Representatives as the executive committee of this association may deem advisable.

E. S. MINER,  
A. A. WHITE,  
E. C. ROBINSON,  
ROBERT PIERCE,  
J. E. EVANS,  
J. R. MOOREHEAD,  
E. R. BURKHOLDER,  
F. L. ADAMS,  
GEO. D. HOPE,  
JAMES COSTELLO,  
JESS R. LASSWELL,  
H. B. BULLEN,  
L. F. MILLER,  
A. L. TAYLOR,  
PAUL KLEIN,

*Board of Directors.*

E. S. MINER, *President.*

By HARRY A. GORSUCH, *Secretary.*

### 36.

*Petitions for Nelson-Corliss bill by Grand Rapids Board of Trade et al.*

[Presented by Mr. Burrows, April 29, 1902.]

Whereas it is believed the interests of all shippers and of all communities, except perhaps a favored few, will be promoted by equal freight charges and privileges to all; and,

Whereas the Interstate Commerce Commission has been deprived by judicial interpretations of the authority to regulate rates and to enforce its decisions which it originally exercised, as intended by the framers of the act creating it: Therefore,

*Resolved by the Grand Rapids Board of Trade,* That we hereby indorse and approve the so-called Corliss-Nelson bill, now pending in Congress, the purpose of which is to restore to the Commission such authority as it actually exercised from the time of its organization until the Supreme Court denied that such authority was conferred upon it. Particularly do we indorse these sections of the bill intended to make the orders of the Commission immediately operative, and to provide for the enforcement of obedience to the orders of the Commissioners.

*Resolved further,* That copies of this resolution be forwarded to Senators James McMillan and J. C. Burrows and to each Representative from Michigan in the National Congress.

I hereby certify that the foregoing is a true and correct copy of preamble and resolutions duly adopted by the board of directors of the Grand Rapids Board of Trade this 8th day of April, 1902.

[SEAL.]

H. D. C. VAN ARMUS, *Secretary.*

SAGINAW, MICH., *February 24, 1902.*

Hon. J. C. BURROWS, *Washington, D. C.*

DEAR SIR: At a recent meeting of the trustees of the National Wholesale Lumber Dealers' Association, held in New York City, the trustees of this association were

unanimous in their opinion that some legislation tending to amend the interstate-commerce act so as to enable the Commissioners to enforce their decisions was most desirable, and that some legislation looking toward the above end should be passed.

A committee was appointed at that meeting, of which the Hon. Charles M. Betts, of Philadelphia, was chairman, and the committee has made a report that after a careful examination of House bill No. 8337 they believe that said bill is entitled to the active support of every member of the National Wholesale Lumber Dealers' Association. We accordingly write you to use your influence in favor of the passage of this act.

A recent decision of the Interstate Commerce Commission in favor of the National Wholesale Lumber Dealers' Association, in a matter brought before the Commission by the association on behalf of members interested, brings home to the lumbermen the importance to their business of the interstate-commerce law, and we are anxious to impress upon you gentlemen representing us in Congress the necessity to encourage such legislation as will enable the provisions of the law to be more effectively carried out. It is of vital importance to our business interests that some such legislation should be enacted.

We therefore call the matter to your attention and earnestly request that you give this matter due consideration, advising us of any suggestions you may have in regard to the best method of our cooperating with you in this important matter.

Very truly, yours,

MERSON, SCHUETTE, PARKER & Co.,  
By F. E. PARKER, *Treasurer*.

---

37.

*Letter from Hon. Martin A. Knapp, chairman of Interstate Commerce Commission.*

WASHINGTON, D. C., May 9, 1902.

HON. STEPHEN B. ELKINS,

*Chairman Committee on Interstate Commerce, Washington, D. C.*

DEAR SIR: The Interstate Commerce Commission responds as follows to your request for a report on Senate bill 3521 and Senate bill 3575, which were referred to the Commission for that purpose.

The bill No. 3575, known as the Nelson bill, contains substantially some of the specific recommendations of the Commission in its report to the Congress for 1898. As to subjects covered by this bill, it is identical in scope, and nearly identical in phraseology, with the measures then proposed. This bill is approved by the Commission for the reasons stated in said report and other reports to the Congress.

This does not imply that the Commission would insist upon everything contained in this measure or object to its modification in some particulars. For example, the Commission is not strenuous about the minimum fine provided in the first section, which amends section 10 of the present law, or the number of days within which certain things are required to be done by section 2, which amends section 15 of the act, or the limitation upon the suspension by the court of the operation of an order made by the Commission during the pendency of proceedings in review, as provided in another part of said second section. What is meant is that the Commission approves the substantial provisions of this bill and would not favor changing them in important respects.

Nor is this bill recommended as a complete and sufficient measure. It would not cover the changes that ought to be made nor fully adapt the law to existing conditions. It would, however, in the judgment of the Commission, be a great improvement upon the present statute and distinctly aid the purposes for which the law was enacted.

The bill, No. 3521, though differing materially in form and excepting the second section, appears to have substantially the same purpose and to accomplish substantially the same changes in the present law as the Nelson bill. If this assumption is correct, the bill 3521, with some modifications, which would doubtless be acceptable to its author, would meet the approval of the Commission, except the second section, though the form of the Nelson bill is preferred. That is to say, it seems on the whole better to amend specifically certain sections of the present law than to enact an independent measure, although the same results were contemplated in one case as in the other.

As to the second section, which confers rights of contract between competing roads

not now allowed, the Commission is not agreed. A majority of its members believe that amendments of this kind, with proper restrictions and connected with other needed legislation and not otherwise, should be adopted and would aid the success of public regulation. One member of the Commission, however, is unwilling to recommend any legislation which would legalize the combination of competing carriers.

Those who favor the general principle and purpose of this second section are not satisfied that the restrictions and safeguards now contained in that section are adequate to prevent an abuse of the privileges proposed to be granted.

This statement is designed to show the general attitude of the Commission as nearly as may be to the bills in question. Individual members may supplement this with the expression of their personal views either in written communications or in oral statements before the committee, if the latter course is preferred.

Very respectfully,

MARTIN A. KNAPP, *Chairman.*

*Concurrent resolution of the twenty-ninth general assembly of Iowa relative to the Nelson-Corliss bill.*

[Presented by Mr. Allison, May, 10, 1902.]

I, W. B. Martin, secretary of state of the State of Iowa, do hereby certify that the attached instrument of writing is a true and correct copy of a concurrent resolution passed by the legislature of the State of Iowa in relation to the Nelson-Corliss bill as the same appears of record in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the secretary of state of the State of Iowa.

Done at Des Moines, the capital of the State, April 30, 1902.

[SEAL.]

W. B. MARTIN, *Secretary of State,*  
By D. A. HITES, *Deputy.*

No. —.

PREAMBLE AND CONCURRENT RESOLUTION IN RELATION TO THE INTERSTATE-COMMERCE LAW.

Whereas it is generally believed that the effectiveness of the interstate-commerce law has been seriously impaired by certain decisions of the Federal courts, and that the law in its present state is practically inoperative in remedying the evils of the transportation service of the country, which was the purpose of its enactment; and

Whereas a bill designated as H. R. 8337 and S. 3575, known as the Nelson-Corliss bill, is now pending in the two Houses of Congress to amend the interstate-commerce act by conferring upon the Commission created thereby additional powers for the purpose of enabling it to enforce the provisions of the act and giving its rulings immediate effect pending review by the courts: Therefore, be it

*Resolved by the senate (the house concurring),* That the Senators and Representatives in Congress from this State be, and are hereby, respectfully requested to give said measure careful consideration and to use their efforts in every proper way to secure its early enactment or the enactment of some other measure which will afford the relief sought.

[Adopted April 9, 1902.]

39.

*Resolution of the Chamber of Commerce of New Haven, Conn., favoring S. 3575, an act to regulate commerce.*

[Presented by Mr. Platt, of Connecticut, May 23, 1902.]

NEW HAVEN, CONN., May 15, 1902.

Hon. O. H. PLATT,

*United States Senate, Washington, D. C.*

DEAR SIR: At the meeting of the chamber last evening the following preambles and resolutions, upon the recommendation of the committee on railroads and transportation, to whom the subject had been referred, were unanimously adopted.

"Whereas there is now pending before the United States Senate and House of

Representatives an act to regulate commerce, generally known as the interstate-commerce act, as more fully set forth in Senate bill No. 3575 and House of Representatives bill No. 8337; and

"Whereas a careful investigation of these bills prove to the satisfaction of the members of this chamber that their passage would result in great benefit to the entire community at large: It is therefore

"*Resolved*, That the Senators and Representatives from this State be earnestly requested to give the above-mentioned bill their active support and to exert their influence in every proper way to secure its enactment; and be it further

"*Resolved*, That copies of these resolutions be forwarded to our Senators and Representatives immediately upon their adoption."

Yours, very truly,

JOHN CURRIN GALLAGHER,  
*Secretary.*

#### 40.

*Resolution of the Commercial Exchange of Philadelphia, Pa., favoring legislation providing for uniform inland rates of transportation.*

[Presented by Mr. Quay May 31, 1902.]

PHILADELPHIA, April 29, 1902.

HON. MATTHEW STANLEY QUAY,  
*Washington, D. C.*

SIR: At a meeting of the transportation committee of the Commercial Exchange of Philadelphia held Tuesday, April 29, 1902, the following preambles and resolution were unanimously adopted:

"The COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

*"House of Representatives, Washington, D. C.:*

"Whereas the necessity for such legislation as will give uniform inland freight rates to all shippers of like commodities, and provide such penalty as will insure a full observance of the interstate-commerce laws, has long been apparent to every commercial locality; and

"Whereas there are now pending before the Congress several bills of amendments, each possessing its respective merits: Therefore,

"*Resolved*, that we hereby respectfully petition the present Congress to pass such legislation as will bring to the commercial interests of this country the much needed uniform inland rates and provide effective penalties against all violations of the laws, thus guaranteeing stability of rates to those whose business is dependent upon inland transportation."

Respectfully, yours,

ARMON. D. ACHESON, *Secretary.*

*Resolution adopted by board of directors of Illinois Manufacturers' Association of Chicago, praying for the passage of House bill 8337.*

[Presented by Mr. Mason, June 4, 1902.]

Whereas it is almost the unanimous opinion of men competent to judge, as expressed in private conversation, in public speeches, in carefully prepared newspaper and magazine articles, and in testimony given before Congressional and other committees of inquiry, that no combination of capital, whether in the hands of individuals, firms, or corporations, is dangerous to the public welfare unless the parties controlling such capital are given an undue advantage over others by means of railroad rates or special transportation facilities which are denied to their competitors and the general public; and

Whereas this opinion finds voice and echo in the heart of the average American citizen, since he asks for nothing in the conflicts of business life but "a fair field and no favor;" and

Whereas the Constitution of the United States, as interpreted by the decisions of the Supreme Court, gives Congress complete control over interstate commerce, to the extent, if need be, of passing upon their tariffs for the railroad corporations, subject only to the limitation that such tariffs shall be just and reasonable; and



Whereas it is competent for Congress to exercise this power; it is competent for them to delegate it to a body established by themselves for the express purpose and charged with the sole duty of exercising it; and

Whereas when the interstate commerce law was enacted it was supposed to be stringent enough to remedy the abuses in transportation matters which had even then grown unbearable, but this opinion has been shown by the experience of the past fourteen years to have not been well founded; and

Whereas there is now pending in Congress a bill known as H. R. 8337, introduced in the House of Representatives January 9, 1902, by the Hon. John B. Corliss, of Michigan, amending the interstate-commerce law, and which has been so carefully drawn, under the light of the decisions of the United States courts, that if enacted into law it is confidently expected will so strengthen the interstate-commerce law that it will fulfill the purposes for which it was originally intended, and that the Interstate Commerce Commission, acting under it, will be able to protect the honest railroad corporations from the cut-throat rates of unscrupulous competitors, as well as from the rapacity and greed of hitherto "favored shippers," and at the same time will be able to secure to the general public the same fair and equal treatment at the railroad ticket and freight offices of the country which they now receive at its post-offices and custom-houses, and to which by law they are entitled: Therefore, be it

*Resolved by the board of directors of the Illinois Manufacturers' Association,* That the speedy enactment into law of H. R. 8337 is demanded by every consideration of the public welfare; and we do therefore respectfully and earnestly urge the Congress of the United States to enact this bill into law during the present session of Congress.

*And be it further resolved,* That copies of the foregoing preamble and resolutions be forwarded to the Senators and Representatives of the United States Congress from the State of Illinois.

---

42.

*Memorial to the Senate of the United States, by the Commercial Club of Duluth, Minn., in favor of the Nelson-Corliss bill.*

[Presented by Mr. Clapp, June 6, 1902.]

DULUTH, May 31, 1902.

HON. MOSES E. CLAPP,  
United States Senator, Washington, D. C.

DEAR SIR: At a regular meeting of the members of the Commercial Club of Duluth, held in the clubrooms Wednesday evening, May 21, 1902, the following resolution was adopted:

*"Resolved,* That the Commercial Club of Duluth, Duluth, Minn., hereby approves of the bill introduced in Congress known as the Nelson-Corliss bill, and requests the Representatives of the State of Minnesota in the Senate and the House of Representatives to give said bill their active support, and exert their influence in every proper way to secure its enactment.

*"Resolved further,* That a copy of this resolution be sent by the secretary of the club to the Representatives of the State of Minnesota in the Senate and the House of Representatives."

Yours, very truly,

ALBERT L. PRESTON, *Secretary.*

---

43.

*Memorial opposing the passage of the Elkins bill, legalizing pooling, by the Atlanta Freight Bureau.*

[Presented by Mr. Clay, June 16, 1902.]

Whereas our attention having been called to a bill now pending in the United States Senate, known as the Elkins bill, the purpose of which being to legalize pooling of freight by the railroads of this country, which we believe would be greatly to the disadvantage of both shippers and producers: Therefore, be it

*Resolved,* That the Atlanta Freight Bureau is opposed to the passage of said bill, and that its traffic manager is hereby instructed to write Senators A. O. Bacon and A. S. Clay and Congressman L. F. Livingston, requesting them to use their best efforts toward the defeat of said bill.

## 44.

*Memorial against the passage of the Elkins bill, by the directors of the Atlanta Chamber of Commerce.*

[Presented by Mr. Clay, June 16, 1902.]

Whereas Senator Elkins has introduced in the United States Senate a bill which legalizes pooling of freight by the railroads of this country, which we believe would be greatly to the disadvantage of both shippers and producers: Therefore, be it

*Resolved*, That the directors of the Atlanta Chamber of Commerce are opposed to the passage of said bill, and the secretary is instructed to write our Senators and Representatives in Congress, asking them to use their best efforts for the defeat of the measure.

*Resolved further*, That the secretary be instructed to communicate this action of the directors to other boards of trade and commercial bodies in this section, and request them to take the same action.

## 45.

*Resolution of Buffalo Merchants' Exchange, praying for favorable action on Senate bill 3575.*

[Presented by Mr. Elkins.]

BUFFALO, N. Y., April 12, 1902.

HON. STEPHEN B. ELKINS,

*Chairman Committee on Interstate Commerce, Washington, D. C.*

MY DEAR SIR: I inclose herewith copy of resolutions adopted by the Buffalo Merchants' Exchange relating to bill which has been referred to your committee.

On behalf of the Buffalo Merchants' Exchange I beg to express the wish that the bill referred to in these resolutions may receive the careful and favorable consideration of your committee.

I am, very respectfully, yours,

F. HOWARD MASON,  
*Secretary.*

The original interstate-commerce act has been interpreted by the United States Supreme Court in various cases so as to greatly restrict the powers of the Commission to effectively accomplish the results intended by such act. Bills have been introduced in the Senate and House—known as Senate bill No. 3575 and House bill No. 8337—which are identical, and having for their object to confer upon the Interstate Commerce Commission authority to make effective its administrative orders, and giving to the defendants the right of appeal to the United States courts, and which continue to limit the authority of the Commission to the correction of rates when it appears, after investigation, that such rates are unreasonable and discriminative; and these bills also repeat the provision of the present interstate-commerce act relating to imprisonment for violation of said act, and in place thereof providing for fines to be imposed for violations thereof. These amendments we believe to be essential for the proper administration of the duties and purposes of the Interstate Commerce Commission: Now, therefore,

The Buffalo Merchants' Exchange urges upon the Interstate Commerce Committee of the Senate favorable consideration of Senate bill No. 3575, and upon the Interstate and Foreign Commerce Committee of the House favorable consideration of House bill No. 8337, having for their purpose the amendment of the interstate-commerce act, to the end that favorable action may be taken thereon at this session of Congress, and that the secretary be directed to transmit a copy of this resolution to the respective committees of the Senate and House of Representatives, the Senators from the State of New York, and the Representatives in Congress from the county of Erie, requesting the cooperation in securing such legislation.

A true copy.

F. HUVAN MASON, *Secretary.*

46.

*Resolution of the Atlanta (Ga.) Freight Bureau favoring passage of S. 3575.*

[Presented by Mr. Nelson, June 19, 1902.]

Whereas our attention having been called to a bill now pending before Congress known as the Nelson-Corliss bill, the purpose of which is to enlarge the jurisdiction and powers of the Interstate Commerce Commission; and

Whereas we believe that the public interests would be better subserved by granting the Interstate Commerce Commission full power to adjudicate all rate differences, to name just and reasonable rates, and to enforce its decrees: Therefore, be it

*Resolved*, That the Atlanta Freight Bureau indorses the Nelson-Corliss bill, and the traffic manager is instructed to forward copies of this resolution to Senators A. S. Clay and A. O. Bacon and Congressman L. F. Livingston with the request that they use their best efforts toward the passage of said bill.

47.

*Resolution of the Atlanta (Ga.) Freight Bureau opposing passage of S. 3521.*

[Presented by Mr. Nelson, June 19, 1902.]

Whereas our attention having been called to a bill now pending in the United States Senate known as the Elkins bill, the purpose of which being to legalize pooling of freight by the railroads of this country, which we believe would be greatly to the disadvantage of both shippers and producers: Therefore, be it

*Resolved*, That the Atlanta Freight Bureau is opposed to the passage of said bill, and its traffic manager is hereby instructed to write Senators A. O. Bacon and A. S. Clay and Congressman L. F. Livingston requesting them to use their best efforts toward the defeat of said bill.

48.

*Resolution directing the Interstate Commerce Commission to investigate rates filed with said Commission by common carriers, etc.*

Mr. Carmack submitted the following resolution:

*“Resolved*, That the Interstate Commerce Commission be, and is hereby, directed to investigate and report to the Senate during the month of December next, in such form and to such extent as may be practicable—

1. The rates filed with said Commission by common carriers subject to the act to regulate commerce and now in force on import and domestic traffic of like kind carried from ports of entry in the United States to interior points of destination which show material differences, in favor of through shipments of imported articles and against shipments of imported articles and against shipments of like articles originating at such ports of entry.

2. What, if any, kinds or classes of imported articles have actually been transported at any time between January 1 and July 1 of the present year by common carriers subject to the act to regulate commerce at rates from ports of entry in the United States to interior points of destination materially less than the rates contemporaneously charged by such carriers upon the same kinds or classes of articles as domestic shipments from such ports of entry to the same interior points of destination; and whether, if it can be ascertained, the rates actually charged upon both the import and domestic traffic were in conformity with the rates in effect thereon as shown in rate schedules filed with said Commission.

3. Show in said report in connection with any such differences in schedule rates in favor of import and against domestic shipments the tariff or customs duties in force under the laws of Congress upon such import traffic carried at any time during the six months' period above specified; and to enable compliance with this requirement

the Secretary of the Treasury is hereby directed to furnish the said Commission, upon its application, a statement showing the tariff or customs duties applicable to such import traffic.

4. Whether in the opinion of said Commission any such differences in rates in favor of import and against domestic shipments operate to produce discriminations and preferences in favor of foreign manufacturers and shippers and against American manufacturers and shippers which ought to be removed, but which can not be remedied by proceedings under the act to regulate commerce; and if so, in what manner that statute should be amended to prevent such discriminations and preferences.

---

# A P P E N D I X .

---



THE ACT  
TO  
REGULATE COMMERCE  
AS AMENDED,  
TOGETHER  
WITH ACTS SUPPLEMENTARY THERETO.

---

WASHINGTON:  
GOVERNMENT PRINTING OFFICE.  
1895.

---

## ORIGINAL AND AMENDING ACTS.

Public No. 41, approved February 4, 1887, and in effect April 5, 1887 (U. S. Stat. at Large, Vol. 24, p. 379; Sup. to Rev. Stat., Vol. 1, p. 529). Public No. 125, approved and in effect March 2, 1889 (U. S. Stat. at Large, Vol. 25, p. 855; Sup. to Rev. Stat., Vol. 1, p. 684). Public No. 72, approved and in effect February 10, 1891 (U. S. Stat. at Large, Vol. 26, p. 743; Sup. to Rev. Stat., Vol. 1, p. 891). Public No. 38, approved and in effect February 8, 1895 (U. S. Stat. at Large, Vol. 28, p. —).

---

## SUPPLEMENTARY ACTS.

Public No. 54, approved and in effect February 11, 1893 (U. S. Stat. at Large, Vol. 27, p. 443). Public No. 113, approved and in effect March 2, 1893 (U. S. Stat. at Large, Vol. 27, p. 531). Public No. 237, approved and in effect August 7, 1888 (U. S. Stat. at Large, Vol. 25, p. 382; Sup. to Rev. Stat., Vol. 1, p. 602).

---



## THE ACT TO REGULATE COMMERCE.

---

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

Carriers and transportation subject to the act.

Act does not apply to transportation wholly within one State.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

What the terms "railroad" and "transportation" include.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Charges must be reasonable and just.

**SEC. 2.** That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Unjust discrimination defined and forbidden.

**SEC. 3.** That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Undue or unreasonable preference or advantage forbidden.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Facilities for interchange of traffic.

Discrimination between connecting lines forbidden.

**SEC. 4.** That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than

Long and short haul provision.

Commission has authority to relieve carriers from the operation of this section.

for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Pooling of freights and division of earnings forbidden.

SEC. 6. (*As amended March 2, 1889.*) That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Printing and posting of schedules of rates, fares, and charges including rules and regulations affecting the same, terminal charges and freight classifications.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to cus-

Printing and posting of schedules of rates on freight carried through a foreign country.

Freight subject to customs duties in case of failure to publish through rates.

toms duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

**Ten days' public notice of advances in rates must be given.**

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

**Three days' public notice of reduction in rates must be given.**

**Published rates not to be deviated from.**

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

**Copies of schedules of rates, fares, and charges must be filed with Commission.**

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission

**Copies of contracts, agreements, and arrangements must be filed with Commission.**

copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs

**Joint tariffs must be filed with Commission.**

shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to

**Power of Commission to prescribe publicity.**

such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

Ten days' notice to Commission of advance in joint rates, fares, and charges.

Three days' notice to Commission of reduction in joint rates, fares, and charges.

Power of Commission to make advances or reductions public.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

Joint rates, fares, and charges must not be deviated from.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

Commission may prescribe forms of schedules of rates, fares, and charges.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a con-

Penalties for neglect or refusal to file or publish rates, fares, and charges.

tempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

Continuous carriage of freights from place of shipment to place of destination.

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

Liability of common carriers for damages.

SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Persons claiming to be damaged may elect whether to complain to the Commission or bring suit in a United States court.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and

must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Officers, &c., of defendant may be compelled to testify.

SEC. 10. (*As amended March 2, 1889.*) That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Penalties for violations of act by carriers, or when the carrier is a corporation, its officers, agents, or employees: Fine and imprisonment.

Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and will-

Penalties for false billing, etc., by carriers, their officers or agents: Fine and imprisonment.

fully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

**Penalties for false billing, etc., by shippers and other persons: Fine and imprisonment.**

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

**Penalties for inducing common carriers to discriminate unjustly: Fine and imprisonment. Joint liability with carrier for damages.**

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the dis-



cretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Interstate  
Commerce Com-  
missioners—how  
appointed.

Terms of Com-  
missioners.

“SEC. 12. (*As amended March 2, 1889, and February 10, 1891.*) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute

Power and  
duty of Commis-  
sion to inquire  
into business of  
carriers and keep  
itself informed in  
regard thereto.

Commission re-  
quired to execute  
and enforce pro-  
visions of this  
act.

Duty of dis-  
trict attorney to  
prosecute under  
direction of At-  
torney-General.

under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Costs and expenses of prosecution to be paid out of appropriation for courts.

Power of Commission to require attendance and testimony of witnesses and production of documentary evidence.

Commission may invoke aid of courts to compel witnesses to attend and testify.

"Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

Penalty for disobedience to order of the court.

"And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Claim that testimony or evidence will tend to criminate will not excuse witness.

Testimony may be taken by deposition.

"The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court,

Commission may order testimony to be taken by deposition.

or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Reasonable notice must be given.

Testimony by deposition may be compelled in the same manner as above specified.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Manner of taking depositions.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission."

When witness is in a foreign country.

Depositions must be filed with the Commission.

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Fees of witnesses and magistrates.

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall

Complaints to Commission. How and by whom made. How served upon carriers.

Reparation by carriers before investigation.

Investigations of complaints by the Commission.

appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

**Complaints forwarded by State Railroad Commissions.**

**Institution of inquiries by the Commission on its own motion.**

**Complainant need not be directly damaged.**

**Commission must make report of investigations.**

**Reparation.**

**Findings of Commission prima facie evidence in judicial proceedings.**

**Reports of investigations must be entered of record.**

**Service of copies on parties.**

**Reports and decisions. Authorized publication to be competent evidence.**

**Publication and distribution of annual reports of Commission.**

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

**SEC. 14. (As amended March 2, 1889.)** That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

**SEC. 15.** That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such

common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Notice to common carrier to cease from violation of act.

Compliance with notice to cease from violation of act. Reparation.

SEC. 16. (*As amended March 2, 1889.*) That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question

Petition to United States courts in cases of disobedience to order of Commission.

Power of United States courts to hear and determine cases of disobedience.

Findings of fact of the Commission shall be prima facie evidence.

Writs of injunction or other process against carriers in cases of disobedience.

has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other

Punishment for refusal to obey writs of injunction or other proper process: Fine.

person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said

Appeals to Supreme Court of United States.

court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall

Appeals shall not operate to stay order or writs issued by the court.

not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable.

Costs and counsel fees.

Duty of district attorneys to prosecute under direction of Attorney-General.

Costs and expenses of prosecutions to be paid out of appropriations for courts.

Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

Petition to United States courts in cases of disobedience when trial by jury is necessary.

Findings of fact of the Commission shall be prima facie evidence.

Trial by jury.

Trial by court.

Appeals to Supreme Court of United States.

Counsel or attorney's fees.

SEC. 17. (*As amended March 2, 1889.*) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the

Interstate Commerce Commission. Form of procedure.	ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States.
Parties may appear before the Commission in person or by attorney.	Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.
Official seal.	
Salaries of Commissioners.	SEC. 18. ( <i>As amended.</i> ) That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall ap-
Secretary—how appointed; salary.	point a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the
Employees.	compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suit-
Offices and supplies.	able offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before
Witnesses' fees.	the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.
Expenses of the Commission—how paid.	All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.
Principal office of the Commission.	SEC. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more
Sessions of the Commission.	of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any mat-
Commission may prosecute inquiries by one or more of its members in any	



ter or question of fact pertaining to the business of any <sup>part of the</sup> common carrier subject to the provisions of this act. <sup>United States.</sup>

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Carriers subject to the act must render full annual reports to Commission.

What reports of carriers shall contain.

Commission may prescribe methods of keeping accounts.

SEC. 21. (*As amended March 2, 1889.*) That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

Annual reports of the Commission to Congress.

**SEC. 22. (As amended March 2, 1889, and February 8, 1895.)**

**Persons and property that may be carried free or at reduced rates.**

**Mileage, excursion, or commutation passenger tickets.**

**Passes and free transportation to officers and employees of railroad companies.**

**Provisions of act are in addition to remedies existing at common law. Pending litigation not affected by act.**

**Joint interchangeable five-thousand-mile tickets. Amount of free baggage.**

**Publication of rates.**

That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act: *Provided further*, That nothing in this act shall prevent the issuance of joint interchangeable five-thousand mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard

to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this act shall apply to any violation of the requirements of this proviso.

**Sale of tickets.**

**Penalties.**

**NEW SECTION (Added March 2, 1889).** That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

**Jurisdiction of United States courts to issue writs of peremptory mandamus commanding the movement of interstate traffic or the furnishing of cars or other transportation facilities.**

**Peremptory mandamus may issue notwithstanding proper compensation of carrier may be undetermined.**

**Remedy cumulative, and shall not interfere with other remedies provided by the act.**

Public No. 41, approved February 4, 1887, as amended by Public No. 125, approved March 2, 1889, and Public No. 72, approved February 10, 1891. Public No. 38, approved February 8, 1895.

An act in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and amendments thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That

**Attendance and testimony of witnesses and production of documentary evidence compulsory before the Commission, and in any case, criminal or otherwise, in the courts.**

no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided,* That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**Penalties: fine or imprisonment, or both.**

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Public No. 54, approved, February 11, 1893.

An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Driving-wheel  
and train brakes.

SEC. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

Automatic  
couplers.

SEC. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

When carriers  
may lawfully re-  
fuse to receive  
cars from con-  
necting lines or  
shippers.

SEC. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Grab irons and  
handholds.

SEC. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of rail-

Standard  
height of draw-  
bars for freight  
cars.

roads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

**Penalty for violation of the provisions of this act.**

SEC. 6. That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed, and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred. And it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to locomotives used in hauling such trains.

**Duty of United States district attorney.**

**Duty of Interstate Commerce Commission.**

**Exceptions to the act.**

**Power of Interstate Commerce Commission to extend time of carriers to comply with this act.**

SEC. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

**Employees not deemed to assume risk of employment.**

SEC. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Public No. 113, approved, March 2, 1893.

An act supplementary to the act of July first, eighteen hundred and sixty-two, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and also of the act of July second, eighteen hundred and sixty-four, and other acts amendatory of said first-named act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain, and operate, for railroad, Governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

Government  
aided railroad  
and telegraph  
lines must them-  
selves maintain  
and operate

SEC. 2. That whenever any telegraph company which shall have accepted the provisions of title sixty-five of the Revised Statutes shall extend its line to any station or office of a telegraph line belonging to any one of said railroad or telegraph companies, referred to in the first section of this act, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies, referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

Connecting tel-  
egraph lines.

Equal facilities  
required.

SEC. 3. That if any such railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line shall refuse or fail,

in whole or in part, to maintain, and operate a telegraph line as provided in this act and acts to which this is supplementary, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Interstate Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Interstate Commerce Commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said Interstate Commerce Commissioners: *Provided*, That the said Commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

Complaints to Interstate Commerce Commission.

Duties of the Commission where complaint is made.

Commission may institute inquiries on its own motion.

Duty of the Attorney-General under this act.

SEC. 4. That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.



SEC. 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the circuit or district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient.

Penalties for failure to comply with the provisions of this act or the orders of the Interstate Commerce Commission.

Actions for damages may also be brought.

SEC. 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Interstate Commerce Commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such

Duty of railroad and telegraph lines subject to this act to file copies of contracts and a report with the Commission.

Annual reports  
to the Commis-  
sion.

claim, and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and

Penalties for  
refusal to make  
reports to Com-  
mission.

its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said Commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said Commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a for-

Duty of Attor-  
ney-General to  
prosecute.

feiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

Right of Con-  
gress to alter,  
amend or repeal.

SEC. 7. That nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the Postmaster-General now has under title sixty-five of the Revised Statutes to fix rates, or, of the Government, to purchase lines as provided under said title, or to have its messages given precedence in transmission.

Equity rights  
of the Govern-  
ment preserved.

Public No. 237, approved, August 7, 1888.

# HEARINGS

BEFORE THE

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

*25* HOUSE OF REPRESENTATIVES

ON

THE BILLS TO AMEND THE INTERSTATE COMMERCE LAW  
(H. R. 146, 273, 2040, 5775, 8337, AND 10930).



WASHINGTON:

GOVERNMENT PRINTING OFFICE.

1902.

*De*



## INTERSTATE-COMMERCE LAW.

TUESDAY, *April 8, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. It has taken some time to dispose of these other matters, but we will now take up the subject of interstate and foreign commerce, and if any gentleman here desires to be heard we will hear him on these bills.

### STATEMENT OF MR. E. P. BACON.

The CHAIRMAN. Now, Mr. Bacon, we want to get some idea about the time that will be consumed, and the number of gentlemen who will appear before us, so far as you know. Will you favor the committee with your ideas on that point?

MR. BACON. I can only give you an indefinite idea with regard to it. There are, perhaps, in all a dozen men, from different parts of the country, whom the committee which I represent expects to be present at these hearings.

The CHAIRMAN. What committee do you represent?

MR. BACON. I represent the executive committee of the interstate-commerce law convention, which was held at St. Louis on the 20th of November, 1900. That convention was called for the purpose of promoting the passage of the Cullom bill, which was then pending in the Senate, and that bill having failed, this committee prepared a substitute bill, which has been introduced in the House by Representative Corliss and in the Senate by Senator Nelson. I appear in behalf of the committee to advocate the reporting of the bill.

The committee have been in communication with a number of the commercial organizations of the country, and have furnished them with copies of the bill and with a synopsis thereof, with arguments in favor of its passage, and have received responses from a large number of the associations favoring its passage, indorsing the bill and stating that their several associations have adopted resolutions requesting the members of Congress representing their respective districts to give it their support. I have a list of the organizations, which I will give to the reporter, but I will state that it comprises eight national organizations, consisting of grain dealers, millers, manufacturers, and mercantile organizations, the National Lumber Dealers' Association, and, among others, the National Board of Trade. Also 17 State organizations of various States, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri; the New England Granite Manufacturers Association, the New England Shoe Dealers' Association, the Ohio Grain Dealers, the National Millers, the Texas Cattle Raisers Association, the Texas

Millers, the Wisconsin Cheese Makers, the Wisconsin Retail Hardware Dealers, and the Wisconsin Lumber Dealers.

These organizations represent, as you will observe, nearly all of the various branches of trade and manufactures.

Of the local organizations in the various States there are 49, covering 21 States, the States being California, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, and New York, with about 10 associations, North Carolina, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin.

There are numerous organizations which have passed similar resolutions, of which, as chairman of the committee, I have heard incidentally but have not been officially informed, in addition to these that are mentioned, which aggregate in all 74.

I will say, also, that the States of Minnesota and Iowa have passed resolutions recommending the passage of the bill during the past winter, and during the previous winter the States of Michigan, Wisconsin, Kansas, Louisiana, and South Dakota—the legislatures of those States—passed resolutions recommending the passage of the Cullom bill, then pending in the Senate, the principal provisions of which coincide with those contained in this bill.

THE CHAIRMAN. Now, what is the objection that you find in the present legislation, and what are the remedies which you propose? State them briefly to the committee, if you please.

MR. BACON. The brief time which remains this morning will hardly afford opportunity to go into the merits of the bill.

THE CHAIRMAN. We propose to continue these hearings right along, every day, and that will give you an opportunity to finish.

MR. BACON. It will be very difficult, in the fifteen minutes now remaining, to give even a comprehensive idea of the difficulties and the reasons for the enactment of this bill. I, however, at a subsequent meeting, will take that up definitely and concisely with the committee. At this time I think that I will only present the public demand which exists for this legislation.

The convention of which I speak appointed this committee for the purpose of promoting this legislation, or, originally, promoting the passage of the Cullom bill. That bill was far more comprehensive, far more drastic, than the bill which has been framed by this committee. The committee in considering and framing a new bill aimed to provide only for two or three vital matters that are necessary to give effectiveness to the present act, leaving minor details to future action, and concentrating all efforts upon these two or three vital provisions, without which, in the opinion of the committee, the present act is almost worthless.

The provisions which are referred to are, in the first place, the giving of the Commission specific authority to prescribe the proper rate to be enforced in the future, when, after full investigation, upon a formal complaint, it finds, after hearing all parties in interest, the existing rate or practice is unjust or unreasonable. That is the primary provision of this bill.

And the second provision, which is considered of equal importance, however, is that the rulings and decisions of the Commission shall be immediately operative, and shall so continue until overruled by the courts, or at least that they shall be operative at a time fixed in the

order of the Commission unless appeal is taken to the courts, and in that case their operation is suspended for thirty days, and if, upon examination of the record, the court is satisfied that the decision of the commissioner proceeds upon an error of law, or is unreasonable upon the facts, it may suspend the operation of such decision during the pendency of the proceedings. In any case, however, the order of the Commission, it is intended, shall be immediately operative.

The reason, the necessity for that, arises from the fact that under the present law the operation of the order of the Commission is suspended until it has passed through various stages of litigation which, according to the statements of the Interstate Commerce Commission, has averaged in the various cases which have been taken before the courts a period of four years. It is evident to anyone familiar with traffic affairs that when a rate or practice has been found unjust or unreasonable by a competent body, such as we believe the Interstate Commerce Commission to be, if that action has to be suspended for a period of four years, or even for a period of two years or one year, the occasion has passed by for deriving any benefit from the action of the Commission, and it practically nullifies whatever action the Commission may take. It suspends its action for such a period of time that it is entirely valueless.

Mr. ADAMSON. You wish to authorize and require the Commission at a certain stage of the investigation to prescribe rates?

Mr. BACON. Yes, sir; and that stage is after a complete investigation.

Mr. ADAMSON. At some point you want them to fix rates?

Mr. BACON. Yes, sir. The term "fix rates," however, is hardly correct. We should say to revise the rates, to correct the rates, to prescribe the rate in a particular case which is to be enforced in the future.

Mr. ADAMSON. You want to fix the rates which they agree upon and conclude this rate?

Mr. BACON. Yes, sir; to be sure, in that particular case. Their authority in this bill in that direction is limited to the particular case in question, and can only be exercised in case of a formal complaint having been filed.

Mr. ADAMSON. Do you think that the Government of its own motion, arbitrarily, without requests from railroad companies, can justly fix rates and still escape responsibility for any results, for any loss that results?

Mr. BACON. I do not quite catch your question.

Mr. ADAMSON. If the Government arbitrarily assumes to fix the rates of the railroad corporations, quasi public corporations, do you think the Government can do that and still escape the responsibility if a loss results to the company?

Mr. BACON. We do not propose to have the Government fix the rate arbitrarily. We propose simply to have that provision in regard to the rates in the case of a complaint by the injured party. It is put before the Commission and the case considered. The testimony of both sides is taken, and they pass upon that rate as to whether it is reasonable and just or not, and, having passed upon it in respect to the past, then they shall proceed further and say what would be in their judgment a reasonable and just rate for the future.

Mr. ADAMSON. If the parties do not request it or consent to it, then would not the action of the Government be arbitrary?

Mr. BACON. Not at all; any further than it might be said that the action of any court is arbitrary. The Commission is a tribunal before which both parties appear, each presenting its own case. The shipper—

Mr. ADAMSON. It is not unusual in any court of this country, is it, for the court to undertake to decide what rates shall prevail with any company or private party for the use of their property?

Mr. BACON. The court, as I understand, has not the power to prescribe a rate for the future. The power of determining the rate is lodged in the legislative body. The Commission is a body organized by the legislative body for the purpose of exercising that function. It is beyond the power of the court to fix a rate.

Mr. ADAMSON. You have no trouble about the proposition as to the power to clothe the Commission with judicial powers? You are willing to that?

Mr. BACON. It can hardly be called a judicial power. Judicial power does not permit of the fixing of a rate in the future. The power to fix a rate is a legislative power, and the only remedy—

Mr. ADAMSON. The Commission would have to exercise judicial power in the precedent investigation before fixing the rate?

Mr. BACON. Not judicial power. It comes through the investigation in a judicial manner and in judicial form, but the Commission is not a judicial body and has no judicial powers conferred upon it, and we do not propose to confer any upon it. We propose, simply, to clothe it with power which will enable it to protect the public in the case of the rates being found unreasonable or discriminative, not only against the continuance of that rate, but also to prescribe what rate shall be substituted for it in the future. That is a legislative act, or an administrative act, I should say.

Mr. MANN. Now, on that point, your idea is that the Commission should have the power to fix a rate which should be enforced until the courts determined otherwise?

Mr. BACON. That is the proposition.

Mr. MANN. Do you think the legislature anywhere has that power to prescribe a rate for railroads which must be accepted by the railroads until the courts determine it is illegal?

Mr. BACON. That right has been affirmed repeatedly by the courts within the last twenty years.

Mr. MANN. I think to the contrary.

Mr. BACON. Yes, sir; according to my information.

Mr. MANN. They can fix the rates, but the railroads have a right to appeal to the courts at once.

Mr. BACON. They have a right to appeal to the courts, and so they have under our proposition.

Mr. MANN. Under your proposition they have got to accept the decision of the Interstate Commerce Commission.

Mr. BACON. Temporarily, while it is pending.

Mr. MANN. You say it makes it of effect. They have to accept the decision of the Interstate Commerce Commission for, say, four years time.

Mr. BACON. No, sir. The carrier has a right to proceed immediately to obtain a reversal of the Commission.

Mr. MANN. Through the Supreme Court of the United States, which you say requires on the average about four years' time to obtain a decision from.



Mr. BACON. Yes, sir; that has been the case heretofore; but it is generally understood that those cases have been delayed purposely by the carriers, for the reason that as long as they could continue the existing rates in force, the act of the Commission being inoperative, they could derive the benefits as long as they could keep the case in the court.

Now, under the proposed amendments it would be to the interest of the carriers to expedite the adjudication of the case, and it is altogether probable that it would not take so long a time, four years, and probably not more than one year, to reach a result.

Mr. ADAMSON. What procedure do you suggest in case of an erroneous rate? Do you propose the other courts attacking this Commission, or do you propose an appellate jurisdiction?

Mr. BACON. It is an appellate procedure. That is, the carrier if it is dissatisfied with the rates shall appeal it to the circuit court.

Mr. ADAMSON. From the Commission to the circuit court?

Mr. BACON. From the Commission to the circuit court.

Mr. COOMBS. Now, let me ask you this question: Supposing, for the sake of argument, that the Commission promulgated an order of some kind, and supposing that it was radically wrong. Now, the railroads would have to abide by that until they could get a judicial determination of it. Now, would that not, conceding that it was wrong, and conceding that they were compelled to do it, pending the decision of court, would that not be an invasion of their rights under the Constitution and under the laws of this country?

Mr. BACON. The presumption is altogether in favor of the correctness of the decision of the Commission.

Mr. COOMBS. No; I am not talking about the presumption. I am talking about this—

Mr. BACON. Excuse me. I will lead up to the reply to that question.

Mr. COOMBS. Yes.

Mr. BACON. The Commission consists of men who are expert in traffic matters—men who have become expert from experience. The members are appointed for the period of six years, but the practice has been to reappoint them from term to term, so that the body becomes practically as permanent a one as the Supreme Court of the United States, or very nearly so.

And it requires such knowledge, intimate knowledge, of traffic affairs and the intricacies of rate making, that after it has given a hearing to both parties, and that hearing, by the way, is always a protracted one and every one appears who is in any way interested in the question, and the rate is investigated in every way, in its relation to other points, and everything related to it in any way is investigated, and, as I say, the presumption is ten to one that the decision is correct; and while there may appear to be a little injustice in making that decision immediately operative, while its correctness is pending in the courts, on the other side, you can see that the injury or wrong coming from the suspension of the orders of the Commission is infinitely greater than any wrong that can be sustained from any probable error of the Commission in fixing the rates.

There is a balance, a balance of results, and it is fair to the public and fair to the railway company that that balance should be considered and the preponderating wrong and injustice which is continued and enforced while these cases are held in court is infinitely greater than

the slight loss which may, in one case in a hundred, possibly, result from the orders on the part of the Commission.

Mr. RICHARDSON. You admit that the rule which it prescribes reverses the rule which prevails in all the courts of this country?

Mr. BACON. I admit that, and I will say in reply to that, that the circumstances are entirely different.

Mr. MANN. Before you are through with your argument I hope you will address yourself to the power of the legislative body to say that the court shall not exercise its authority at a preliminary hearing—as to whether the legislative body has the power to fix a rate and to say that rate shall be observed until the final decision of the Supreme Court of the United States overrules entirely the theory of the judicial power that has the right to issue an injunction against an improper rate.

Mr. BACON. I can cite you decisions showing beyond doubt that the power rests with the legislative body; but, as you suggest, there is opportunity of appeal from one court to another until it is finally decided by the Supreme Court.

Mr. MANN. If you can find any decision to the effect that the legislature of a State can fix a rate, and that that must be observed until the Supreme Court of the United States says otherwise, I would be very glad to see it.

Mr. BACON. There is a question of the rights of the people—

Mr. COOMBS. One individual is the people. Now, you take judgment against John Doe. John Doe appeals, and that judgment is challenged. Now, are you going to provide a law for the execution of that judgment pending the appeal which he may take?

Mr. BACON. That brings me to the question which this gentleman put. In case of business transactions which come before the court there are two parties to the transaction, and those two parties are the only ones interested, and each may protect himself in the case of an appeal by filing a proper bond, and the final decision of the court will be carried out in that individual case.

Mr. ADAMSON. You propose to carry it out pending the appeal?

Mr. BACON. Excuse me, it will be carried out in that particular case, and the two parties, who are the only ones interested, will get justice.

In the case of the railroads the party, the man, who bears the freight ultimately is not the one who pays it. The one who pays it is a middle man, and he distributes that between forty or fifty or one hundred individuals who are not known and who can not be reached, and who are really the parties in interest. That fact renders it necessary that there shall be special legislation protecting these parties who are the real sufferers and can not protect themselves, who have no standing in court, and must continue paying these excessive charges, charges found to be excessive by a competent body, from year to year, until the final result is reached.

The CHAIRMAN. The time for adjournment of the committee has arrived.

Mr. BACON. I should be very glad to continue at the next hearing.

The CHAIRMAN. Very well.

Thereupon, at 12 o'clock meridian, the committee adjourned until to-morrow, Wednesday, April 9, 1902, at 10.30 o'clock a. m.

WEDNESDAY, *April 9, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

**STATEMENT OF MR. E. P. BACON—Continued.**

The CHAIRMAN. The committee will be glad to have you proceed, Mr. Bacon.

Mr. BACON. Mr. Chairman, I wish to state before proceeding that the convention which I have the honor to represent consisted of delegates from various commercial organizations from different parts of the country—41 in number—business men representing various branches of business; and I will state, also, as to my personal position, that I am simply a business man and was a delegate at that convention, representing the Milwaukee Chamber of Commerce.

I endeavored yesterday to answer a few questions of a legal nature, which I did from the information which I have obtained from a somewhat careful observation of the workings of the interstate-commerce act since its enactment and some of the important cases that have been adjudicated under that act.

I will say that the constitutional questions which have been brought up were treated at some length before the Senate committee two years ago, when the Cullom bill was before that committee, by Judge Cowan, from Texas, and his discussion of the matter will be found in the report of the hearings before that committee, which I will file for the information of this committee.

The question that was asked, and not fully answered at the time of my closing yesterday, was in relation to a legislative act being effective in relation to rates prior to its confirmation by the courts. I personally answered the question, but wish further to say in connection with it that, as I understand, the State laws in relation to transportation and the fixing of rates are immediately effective, as I believe all legislative acts are; the carriers, however, having the privilege, having the right, of suspending the operation of the law by obtaining a writ of injunction and proceeding in the courts to test its constitutionality. That, I think, is very similar to the position in the matter of the fixing of rates by the Interstate Commerce Commission, as proposed in the bill which has been introduced through the instrumentality of the committee which I represent, called the Corliss bill, in the House.

Although in terms the rulings of the Commission are made effective, as I stated yesterday, except as being suspended for thirty days in case of review by the circuit court, yet the carriers would have the same privilege under that provision of instituting legal proceedings in their behalf and suspending the operation of the ruling of the Commission by means of an injunction in the same manner in which the carriers in the individual States under the laws relating to the State commissions proceed.

I wish to call the attention of the committee to the report of the Industrial Commission on transportation, which was presented in the month of February, I believe, a Commission which, as you all know, was organized by Congress, consisting of four members of the two Houses of Congress and ten citizens who were appointed by the President to complete the Commission, making a Commission of eighteen in

number. That Commission has been between three and four years engaged in a thorough investigation—

The CHAIRMAN. The committee are familiar with that.

Mr. BACON. Yes, sir. And the report which it made was signed by 16 of the 18 members of the Commission; and I would like, from the fact that its recommendations made to the committee coincide to a large extent with the provisions of the bill which is under consideration, to read the recommendations made by the Commission in relation thereto. It states in its report on transportation:

To the end that discrimination and inequality as between shippers, and maladjustment of freight rates between competing markets and trade centers may be abolished or minimized; that the public may be assured of reasonable and stable freight rates, which will at the same time afford fair returns upon capital invested, etc., we recommend:

1. That the policy of governmental supervision and control of railroads as originally laid down in the Senate committee report of 1886, and embodied the following year in the interstate-commerce act, be revived and strengthened; that the authority of the Interstate Commerce Commission necessary for the adequate protection of shippers, and clearly intended by the framers of the law, be restored, etc. Specifically, such legislation should provide—

That strict adherence to published tariffs be required and rebates or discriminations prevented by an increase of the penalties therefor. These penalties should be not only against the person who gives but also against the one who accepts discrimination in any form whatsoever. Corporations should be made liable, the same as individuals. Provisions for imprisonment in the present law should be repealed.

For the definite grant of power to the Interstate Commerce Commission, never on its own initiative, but only on formal complaint, to pass upon the reasonableness of freight and passenger rates or charges; also the definite grant of power to declare given rates unreasonable, as at present, together with power to prescribe reasonable rates in substitution.

Appeal from an administrative order of the Commission should not vacate or suspend an order unless it plainly appears that such order proceeds upon some error of law or is unjust or unreasonable on the facts, in which case, and not otherwise, the court may suspend its operation during the pendency of proceedings in review. All findings of fact by the Commission, when properly certified, should be received as prima facie evidence in subsequent proceedings in the case. New testimony offered by either party, when it appears that such testimony is material and could not have been taken in the first instance, should be taken by the Interstate Commerce Commission on order from the court. The time in which an appeal to the Supreme Court of the United States may be taken should be limited to thirty days, but such appeal should not vacate or suspend the order appealed from.

Those provisions are precisely as contained in our bill.

In connection with the subject that was brought up yesterday, in regard to giving the Commission power to prescribe a rate to be substituted for one which is found to be unreasonable or unjust, I would like to cite further from the report of the Industrial Commission, under the head of "Effect of maximum freight-rate decision," the Supreme Court decision in which the power to prescribe rates was denied to the Commission, although it had been exercised during ten years prior thereto. The Industrial Commission says:

The immediate effect of this decision was to prevent any enforcement of orders relative to rates by the Commission. The carriers immediately refused to obey any orders which the Commission issued for the redress of grievances. This policy has been manifested with increasing clearness during the five years subsequent to the decision. It has become more and more certain that the denial of the right, not only to pass upon the reasonableness of a particular rate, but to prescribe what rate should supersede it, means the abolition of all control whatever. The entire inadequacy of making rate regulations dependent upon the mere determination of rates as applied in the past without reference to rates which shall prevail in the future is apparent on all sides. More than this, all remedy for the parties who have borne the burden of an unreasonable rate would seem to have been removed. \* \* \*

Experience shows that almost no shippers or other parties injured actually attempt to secure the restitution of moneys already paid for unreasonable charges. In only 5 out of 225 cases down to 1897 was a rebate actually sought, and in these cases \$100 was the maximum sought to be recovered. As a matter of fact, the damage inflicted by the existence of an unreasonable rate could not be measured by hundreds or perhaps by hundreds of thousands of dollars. The bearing of this citation is to show that any effectual protection to the shipper must proceed from adjudication of the reasonableness of rates before and not after they have been paid; that is to say, in advance of their exaction by the carrier. Power to pass upon the reasonableness of such rates prior to their enforcement as a consequence constitutes practically the only safeguard which the shipping public may enjoy.

In that connection I wish to introduce an interview, published in the *Railway World* of March 22 last, with Judge James A. Logan, general solicitor of the Pennsylvania Railroad, in discussing this question. I will read these extracts from it:

Fortunately, as the law came to be framed—

Referring to the interstate-commerce law—

it was recognized to be experimental and was conservatively expressed, its method of enforcement being left to depend upon the constraint of penalties named for its violation. The result was that, like all efforts to enforce business propositions by penal consequences, as an aggressive agency it was not a great success. Conservative action, however, on the part of the Interstate Commerce Commission, controlled by the guiding and restraining hand of the courts, coupled with the disposition of the railroad managers who recognized that having large gifts from the people, in the possession of their franchises to construct and operate railroads and in the possession of the power of eminent domain, and having much occasion to rely upon Government support in operation, and above and overruling all, the American instinct of recognizing the importance of the observance of existing laws, the whole tendency was that of gradual conformity to the law and a recognition of the right of reasonable governmental supervision. The result has been that latterly, whatever may have been the facts as to previous periods, the act to regulate commerce has been fairly well observed by the larger railroad interests; and being well observed, the crudities of the law as existing have been discovered and the necessity of a more direct means of enforcement of the powers of the Government recognized.

That an unjustly discriminative or unreasonable rate is wrong goes without saying. That when a given rate has been found to be unjust and unreasonable, after a full hearing of the parties by a disinterested administrative tribunal appointed by the Government, and another rate suggested as fair and just by the same tribunal, it must be manifest that the old rate ought to go out and the new rate come in, subject, of course, to review by the courts.

Further, he says, after having made a particular statement:

It may generally be stated otherwise as a provision authorizing the Interstate Commerce Commission to put in force a rate found by them to be just, subject only to the supervision of the courts; whereas now the Commission has no power at all to make an order as to a rate for the future, and its orders, even as to the past, can not go into force until after full hearing in the courts on new testimony; and the observation has been that such hearings are capable of indefinite prolongation.

For my part, I have faith in the integrity of governmental agencies, especially those of the dignity of the Interstate Commerce Commission. I believe not only the shipper but the carrier needs governmental help. In short, it seems to me the time has come when the Government should reassume the right of a moderate control and supervision over the carriers occupying the Government's highways and that this, in its operation, should reach forward as well as backward—the carrier to have a reasonable return for his investment in the agencies of carriers, and the shipper the assurance of a prompt service and a reasonable rate, and the public to be protected by stability and uniformity in all charges.

One further extract:

Another marked feature of the proposed legislation is that it makes the shipper who is a party with the railroad in violation of the law—that is to say, the shipper who accepts rebates and preferences—subject to the same penalties for this violation of the law as are imposed upon the carrier for such violation. Moreover, it allows the power of the court to be invoked against both shipper and carrier against the

allowance of continuance of preferences on the complaint of the Commission, its decrees in this respect to be enforced by prompt injunction processes. If this act is passed railroads can no longer be, as they are sometimes said to have been in the past, subject to the dictation of the great shippers both as to rates and facilities.

Mr. RICHARDSON. If it does not interrupt your argument—

Mr. BACON. No, sir; it does not.

Mr. RICHARDSON. I would like to hear you define just what authority and what power the Interstate Commerce Commission has now. I catch the drift of what you think it ought to have in addition, but what can it do now?

Mr. BACON. It has now the power of investigation and recommendation. Its orders have no effect until enforced by the court upon the application of the Commission. That is, if the order is not voluntarily obeyed by the railroad company the Commission is required to go before the circuit court and have the case reviewed and obtain from the circuit court, if the court finds it proper, an order for the enforcement of the ruling of the Commission.

Mr. RICHARDSON. Now, your policy is, instead of going before that circuit court, it is to give the Commission the power to enforce its own order and allow the railroad, in the meantime, to take an appeal?

Mr. BACON. That is it exactly; making the orders of the Commission immediately effective, subject to appeal by the carriers, placing the carriers in the position of complainants in that case, instead of defendants, as is now the case.

Mr. RICHARDSON. You would make the Interstate Commerce Commission take the place of the court?

Mr. BACON. That is it.

Mr. RICHARDSON. And give it judicial powers?

Mr. BACON. The Commission would occupy the position of defendant in the case, whereas now it is the complainant. The Commission now comes before the court as complainant to secure an order for the enforcement of its rulings.

Mr. MANN. That is not the real gist of what you are after. The Interstate Commerce Commission now has only authority as to rates to declare what is an unreasonable rate; it has not authority to declare what a reasonable rate is. You want to confer upon them the power to declare what a reasonable rate is and to enforce it.

Mr. BACON. The decision of the Supreme Court has placed the Commission in that position.

Mr. MANN. That is the law as it stands.

Mr. BACON. Yes; but, as I said a few moments ago, the Commission proceeded on the presumption that after finding a rate to be unreasonable it had a right to prescribe a reasonable rate for application in the future, which it did without question for ten years, and the object of this proposed amendment is to confer that power on the Commission, which it was supposed to possess, but which has been denied, and to enable it to resume its operations in the same manner it proceeded in the preceding ten years referred to.

The CHAIRMAN. During that period of ten years that you have spoken of was the administration of the interstate commerce law more effective, in your judgment?

Mr. BACON. It was far more effective.

The CHAIRMAN. Was it satisfactory at that time?

Mr. BACON. It was highly satisfactory, and I will say that as a close observer of transportation operations for the past thirty-five years or

more, and a pretty intimate knowledge of the workings of transportation affairs in connection with important business, that during that ten years the condition of transportation throughout the country was better than it ever was previously or than it has ever since been since this power was denied by the Supreme Court; and our desire is to restore that condition which existed during those ten years.

Mr. MANN. Do you know how many cases there were during those ten years where the Interstate Commerce Commission declared and enforced a reasonable rate?

Mr. BACON. I could not say the precise number; I know that there was a large number of such cases. Among its first cases—in fact, within three months after its organization—a case of that kind was determined and was complied with on the part of the railroad, as, in fact, all of their rulings were during that period that I have referred to.

Mr. MANN. I may be mistaken, but my recollection is that Judge Cooley, who was one of the first Commissioners, decided, in an opinion he rendered, that the Commission had no such power within the first year after it was inaugurated.

Mr. RICHARDSON. Had no power to declare what a reasonable rate was?

Mr. MANN. Yes; that is as I understand it.

Mr. BACON. The decision was, as I understand it, as rendered by Judge Cooley, that the Commission had no right to fix a rate primarily, but it did exercise the power, and exerted it continuously, to prescribe a rate to be substituted for one that was found to be unjust or unreasonable.

Mr. RICHARDSON. That is, you mean to revise a rate?

Mr. BACON. Yes.

Mr. RICHARDSON. Or change it?

Mr. BACON. Order a change, and such orders were complied with universally.

Mr. RICHARDSON. You say that existed during the period of ten years and that there was no trouble about it?

Mr. BACON. During the latter part of the ten years the question began to be raised whether this authority was specifically conferred by the interstate-commerce act upon the Interstate Commerce Commission.

Mr. RICHARDSON. To revise a rate?

Mr. BACON. To revise a rate, and under that questioning the Supreme Court sustained the position taken by the railroad interests.

Mr. RICHARDSON. That the Commission could not do it?

Mr. BACON. That they could not do it.

Mr. RICHARDSON. And you want, by this law, to be reinstated—

Mr. BACON. Yes, sir.

Mr. RICHARDSON. Put back in that condition which you say proved entirely satisfactory, and under which things went along all right?

Mr. BACON. Yes; it gave general satisfaction throughout the country.

Mr. MANN. Whatever may be the contention on the two sides, by the actual jurisdiction exercised during that ten years, you say that the enforcement of the law during those ten years was satisfactory to the shippers?

Mr. BACON. It was entirely satisfactory to the country at large.

Mr. MANN. And that any authority which they did exercise would be sufficient to be conferred upon them?

Mr. BACON. That is it exactly.

Mr. RICHARDSON. But it seems to me now, if you will allow me to say so, if I understand your position, that the desire you now have is to permit the Commission to render an absolute judgment, to go along and enforce it, and then let the railroad companies take an appeal? In other words, to hang a man and try him afterwards.

Mr. BACON. Not by any means; no. The Commission fixes its rate and the railroad complies with it, if it considers it reasonable and right.

Mr. RICHARDSON. But the railroad does not consider it reasonable and right, then they have to take an appeal after you have enforced the judgment?

Mr. BACON. Exactly; but while there is an apparent inconsistency there, the actual practical working of it would involve very rare and exceptional instances of injustice. As I said yesterday, they are so slight that when they occur they would affect such a small interest as compared with the interests of the public at large, which is held in abeyance and which is subject to the continuance of the wrong rate, that it is hardly worthy of consideration.

Mr. COOMBS. But here is the proposition, assuming that they had a right to the last resort, a resort to the highest court of the country; assuming that, then, do you not abridge that right by enforcing an intermediate judgment? How about that constitutional proposition?

Mr. BACON. You will observe that it is not an inflexible thing that any carrier considering itself wronged may by appeal to the courts have the order suspended during the pendency of the proceedings if the court, on an inspection of the record, is of the opinion that the action of the Commission is wrong; that it proceeds either upon an error of law or is unreasonable upon the facts of the case. It is made the duty of the court by this bill in such cases as that to suspend the operation of the law until the question is adjudicated.

Mr. RICHARDSON. By injunction?

Mr. BACON. The bill does not prescribe that it shall be done by injunction. It makes it the duty of the circuit court if, on an inspection of the record, it is clearly of the opinion that the order is illegal or is unreasonable to suspend the order pending the proceedings. Let me read a copy of that—

Mr. RICHARDSON. What is the difference, then, between that and the original plan of letting it first go to the United States circuit court and let them settle the question? If they have that right to revise at once, what is the difference in the position you take and the condition existing before, in allowing it primarily to go to the United States circuit court and let it be settled there?

Mr. BACON. To leave it to the judgment of the circuit court as to whether that ruling shall be suspended or not? At present it is not enforceable until the validity of the order has been passed upon by the court.

Mr. MANN. That is not the only change you make.

Mr. BACON. In this connection allow me to read you the precise provision of the bill.

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.



Mr. RICHARDSON. Then if the railroads want to take an appeal from that court it would have to go to the Snpreme Court, but in the meantime the law will be enforced?

Mr. BACON. If it has not been suspended by the circuit court.

Mr. RICHARDSON. Suppose the Federal circuit court sustains the order of the Interstate Commerce Commission and says it is a reasonable rate, and still the railroad is not satisfied and wants to take it to a court of last resort—that is, the Supreme Court of the United States. While they were doing that your order would be enforced, of course?

Mr. BACON. That is true.

Mr. MANN. The bill specifically provides for that.

Mr. BACON. The purpose of that is to expedite proceedings. As you will see, in the present condition of affairs it is to the interest of the carriers to prolong proceedings to the utmost possible extent, and that has been their course right along. There are cases now before the courts that have been pending for nine years. There are numerous cases that have been pending for from five to seven years, and the railroads have pursued that course purposely.

Mr. RICHARDSON. That would apply to all courts throughout this country, to complainants and defendants throughout the country in general. There is a general tendency on the part of a good many parties to delay.

Mr. BACON. That is true; but it is greatly to the interest of the railroad companies to prolong this litigation, because during the pendency of the proceedings it is reaping the benefit of the rates which have been declared unreasonable and unjust. It has every incentive to prolong the proceedings. That is a condition from which relief must be obtained in some way or other, and it seems to this committee which I represent that the only way it can be obtained is by the course prescribed in this provision, which makes it to the interest of the carrier to expedite proceedings.

Mr. MANN. You say a case is pending now between the railroad company and the Commission which has been pending for nine years?

Mr. BACON. There is one case which has been pending for nine years; yes.

Mr. MANN. I should think that was a serious reflection upon the Commission.

Mr. BACON. What the cause may be I am unable to say.

Mr. MANN. That is, if there is any reason for trying the case at all.

Mr. BACON. But from my observation of the proceedings of the Commission I have never seen any reason or had any reason to suspect them of negligence or of want of proper care and proper exertion to bring their cases to settlement; but you who are lawyers on this committee know very well how easy it is for a party to postpone the trial of a case.

Mr. MANN. We know that one party alone can not postpone a case forever.

Mr. BACON. I will have to refer you to the reports of the Commission. The report for 1897 discusses it very fully, and the committee can obtain valuable information from that report.

Mr. RICHARDSON. I do not see why the same complaint does not apply to all other cases in life. My observation is that there is delay on both sides, and if you would apply that drastic rule to all the interests of life there would be a great upheaval.

Mr. BACON. The difference lies in the fact that in these cases before the courts of the country it is to the interest of both parties to secure an early decision, but in these cases I have been referring to it is to the interest of one party to delay the proceedings as long as possible.

Mr. RICHARDSON. I do not know that I agree with you that it is to the interests of both parties in cases in the ordinary courts to have a settlement, to conclude the cases. I do not think that is the case as a matter of fact.

Mr. BACON. It is a question of pursuing the course that will result in the less evil to all parties concerned, and when you balance the probabilities and the injustice imposed upon one party or the other, you can not fail to see that the injustice to the public is at least a hundred times greater than any possible injustice that may result to the railroad company. In the first place, the case of the railroad company has been considered by expert and skillful men in that particular subject, and their decision is presumptively correct. The instances in which it would be found to be incorrect would be exceedingly small. They have been exceedingly small in the past.

In fact the cases in which the Commission has been reversed have been almost entirely upon the construction of the law in reference to the power it confers upon the Commission and not upon the merits of the decision of the Commission itself, with the exception of the cases coming under what is known as the long and short haul section of the law, which has been construed by the courts differently from the way it was construed by the Commission. That, however, relates simply to the extent to which the section was intended to control the determination of rates in relation to longer and shorter hauls; but as to the merits of a case, the actual merits of a case in which the Commission has fixed any rate or prescribed any differential, as it is termed, between two competing rates, the Commission has never been overruled. It has never been overruled on a point of right, on a matter of equity.

Mr. MANN. Do you propose any amendment to the long and short haul in this?

Mr. BACON. No amendment to that. That has been purposely left out in order to have this particular point determined by itself by Congress without being complicated with any other point in connection with the law.

Mr. MANN. The Interstate Commerce Commission makes one of the strongest complaints against the defect in that provision of the law.

Mr. BACON. There have been several cases adjudicated under this section which have practically nullified that section of the law, and that needs attention, needs remedy; but so far as the convention which I represent is concerned we do not propose to do everything at once. We want to have this question settled in the first place as to whether the Commission shall prescribe the rate to be substituted when it finds the existing rate wrong, as it did during the ten years of its existence which I have referred to.

Mr. RICHARDSON. That is, in effect, that the judgments of the Interstate Commerce Commission are presumptively correct?

Mr. BACON. That is it; yes.

Mr. RICHARDSON. You reverse the order of things; that a man is supposed to be innocent until he is proven guilty.

Mr. BACON. It is hardly a question of guilt.

Mr. RICHARDSON. Yes; it is parallel.

Mr. BACON. It is a question of dollars and cents.

Mr. RICHARDSON. I understand; but the principle is the same, the ruling of all other courts is against that presumption that you are asking for, until the final court passes upon it. It strikes me that way.

Mr. BACON. But you must observe the distinction between the enforcement of freight rates and the enforcement of contracts between individuals. The individual can be protected while his case is pending by the filing of a bond, and finally obtain justice and lose nothing by the long continuance of the case in the courts; but in the case of the enforcement of freight rates the public has got to suffer continuously while these cases are being determined, unless some relief is provided, and that burden has become to be so great and so extensive and so general throughout the entire country that it certainly should receive the attention of Congress, and relief should be provided if there is a possible way for it to be obtained.

Mr. MANN. Do you expect to give us a lot of testimony showing that this present condition is very hard upon shippers?

Mr. BACON. We do not propose to present very much testimony of that character, although we will present some; but on that point we will depend upon the hearings that were held before the Senate committee on the Cullom bill. These principal provisions of our bill are substantially the same as the provisions in the Cullom bill. That case was exhaustively heard by the Senate committee two years ago, although action was not reached.

I will proceed further with a quotation from the report of the Industrial Commission on "The objections to power to fix rates in advance," the very question that is before us. That report says:

I would like right here to read a brief extract from an editorial which appeared in the Railroad Review of January 18, a leading railway journal, on amending the interstate-commerce law, which is as follows:

Elsewhere in this issue will be found a protest written by Mr. Walker D. Hines, vice-president of the Louisville and Nashville Railroad, against the proposed legislation to amend the act to regulate commerce so as to give to the Interstate Commerce Commission authority to determine rates.

Mr. Hines, as a lawyer, perceives great danger in transferring from the owners of the property to the Interstate Commerce Commission or to any other outside authority the power of rate making, but it is altogether possible that he is not as thoroughly posted as to the danger to railroad revenues which attaches to the present method.

This is of course a railroad view of the subject.

If any tribunal to which such authority should be committed should be one-half as reckless with rates as are the individuals at the present in control, there would be such a protest throughout the length and breadth of the land as has never yet been heard.

If the only question at issue was the simple one of rate making by the Interstate Commerce Commission, there would be little difference of opinion on the subject. It is a mistake to suppose that the Commission desires this power simply as a question of authority. It is only fair to say that so far as they advocate the amendment of the law in this particular it is for the purpose of making possible the administration of the law in accordance with the design thereof.

No denial whatever of the arbitrary and enormous power which the right to make freight rates imposes can be entertained for a moment. A pertinent question, however, is as to whether the exercise of such power by irresponsible railroad managers, as at present, is reasonable. If, according to the statement of the railroad interests themselves, the power to make freight rates involves the right to make or break men, industries, and even the prosperity of entire States, how great is the necessity for adequate supervision, subject to appeal to the courts. This is apparently recognized

by the more conservative representatives of the carriers themselves, as evidenced by testimony before the Industrial Commission.

Under the circumstances at present prevalent this arbitrary power is exercised by one party, namely, the traffic managers of the railroads in interest, without any appeal whatever. \* \* \* As against the claim that the exercise by the Commission of the right to prescribe rates involves the transfer of all rate-making power for the roads of the country to an administrative commission, it may be urged that during the ten years that this power was supposed to exist no such revolutionary effect was discernable. So long as the Commission is restricted to issuing orders only upon complaint and after investigation, it is scarcely to be said that the roads will be deprived of their right to promulgate rates in first instance for themselves. \* \* \*

The burden of complaint is at the present time that the railroads are the sole arbiters as to reasonable rates, and it seems illogical, therefore, however expedient as a matter of policy it may be for them, to allege the injustice of such a situation as a ground for objection to conferring rate-making supervision upon a Government commission.

The regulation of commerce is a large question. It requires among other things that rates shall be equitable both to the railroads and to the people. It also includes the adjustment of rates as between localities. It may fairly be doubted if in the absence of the power to say upon investigation what the rate should be there is any hope of accomplishing these things.

That the law needs amending is admitted. How it shall be amended is a question on which there are many divergent views, and in this respect railroad men differ as much as others.

I would say in this connection that the matter of prescribing the proper rate, when the existing rate is found to be wrong, is the only practical method of correcting a discrimination that is found to exist between two different competing localities. Unless, when the Commission has investigated a case and found that the rate is discriminative, it can state what change shall be made in the rate by the defendants—in those cases, of course, there will be two or more defendants—unless it can prescribe what rate shall be put in force by both defendants or all of the defendants in relation to these two particular points in question there can be no remedy provided whatever. If it simply declares that it finds the existing rate to be wrong and orders a discontinuance, the discontinuance of the existing rate may be made by a very slight change in either one rate or the other, which will afford practically no relief. To give relief the Commission must go further and say just what rate is requisite to be made to place the two competing points on an equality.

A case of that kind came up five or six years ago, called the Eau Claire case, which resulted in just that way. It was a case of discrimination in rates on lumber from Eau Claire, Wis., and from Winona and La Crosse to the same points, those two places being points on the Mississippi River somewhat nearer—100 miles or thereabouts nearer—to the points of destination than Eau Claire. The Commission heard the case and decided that the existing differential in rates, which was, I think, 5 cents a hundred pounds, if I remember rightly, was too large, was an unreasonable difference, and that it discriminated against the product of lumber in the region of Eau Claire; and the Commission declared that a reasonable difference in the rates between the points in question would be not to exceed 2 cents a hundred pounds.

One of the railroad companies, the railroad company taking the business from Eau Claire, immediately reduced its rates and made its differential 2 cents a hundred pounds instead of 5 cents a hundred pounds, as compared with the rates from Winona and La Crosse. The railroads taking the business from Winona and La Crosse immediately

reduced their rates the same. A further attempt was made—an attempt at negotiation was made—to agree on a differential to approach the decision of the Commission, if not to comply with it entirely; but the lines from La Crosse and Winona refused utterly to make any change in their rates which would produce a differential of less than 5 cents a hundred pounds from Eau Claire. And that case stands in the same way to-day, and that country, that lumber country, is subjected to that disadvantage of 3 cents a hundred pounds on its lumber as compared with the competing lumber section around Winona and La Crosse.

The CHAIRMAN. They got a lower rate, did they not?

Mr. BACON. They got a lower rate, but nevertheless it was just as largely discriminative; there was just as much discrimination in the second case as in the former.

The CHAIRMAN. Was the general shipper hurt by that or the locality?

Mr. BACON. The lumber-producing interest in that locality was subjected to that disadvantage unjustly as compared with the lumber interests in another locality. The cases that come before the Commission are largely of that character—cases of discrimination between sections.

Mr. MANN. This bill then would give to the Interstate Commerce Commission the right to keep up or raise rates?

Mr. BACON. It has not worked out in that way.

Mr. MANN. It worked that way in that case.

Mr. BACON. No; in this case there would have been no change in the rate whatever if the case had not come before the Commission, and the ruling of the Commission would have been to put the rate down from Eau Claire and not down from La Crosse or Winona.

Mr. MANN. If the company had attempted to put it down at the other place, then the Commission would have ordered them to raise it. Would not that have followed?

Mr. BACON. Yes.

Mr. MANN. How long would an order of that sort remain in existence; how long a time must elapse before a railroad company can reduce its rates after the Interstate Commerce Commission has decided what is the reasonable rate at a particular time under this bill?

Mr. BACON. I will state that the provision of our bill is that an order of the Commission shall continue in force two years, and if the rate is then changed by the carrier the public has the right to present its objections to the Commission and have the case considered by the Commission, and pending its consideration the previous rate shall continue in force.

Mr. MANN. During that time, then, the railroad company would not be permitted to reduce its rates?

Mr. BACON. Well, sir, the operation of the proceedings of the Commission has always been in the direction of reducing rates.

Mr. MANN. That is not the case, Mr. Bacon, before us. It is a question of power here. We know that the railroad company changes its rates on grain from the West several times a year.

Mr. BACON. Yes.

Mr. MANN. Necessarily the rates are lower, I suppose, in the summer time, when they have lake competition. At any rate, they are changed. Possibly the Commission would not require so low a rate in the winter time. Do you say that the railroad companies under this bill could not change their rate?

Mr. BACON. It would not affect that.

Mr. MANN. Why not? It fixes a reasonable rate.

Mr. BACON. It fixes a reasonable rate that may not be exceeded.

Mr. MANN. Is that your bill, "That it may not be exceeded?" That would not change the power now of discriminating rates.

Mr. BACON. The cases brought before the Commission are always those of being too high or discriminating.

Mr. MANN. I think sometimes the rates are too low; that that is the trouble; that they are too low from another point. Very often one city claims the rates are too low to another city.

Mr. BACON. In these cases one has been too high or the other too low; but as a general thing it has been the former, and the actual fact has been that in every case of that kind the rate has been reduced; the higher rate has been reduced.

Mr. MANN. Under this bill, when the Interstate Commerce Commission fixes a rate, can the railroad company change that rate within two years' time?

Mr. BACON. There is nothing to prevent its reducing it except in case of relative rates. In cases of rates between two competing points, if one railroad reduces the other must reduce correspondingly and preserve the differential which has been prescribed by the Commission. In relation to the question of reducing rates I would say, however, that it is no benefit to the public to have rates unreasonably low; it is no benefit to the public to have rates so low that the railroads can not furnish proper service and can not be of the value to the public that they would be otherwise; and the purpose of this bill is not to reduce rates; it is to produce equality, equity, and rectitude.

Mr. MANN. In the language of the bill "to establish or maintain"—

Mr. BACON. Read a little further, please.

Mr. MANN (reading):

The relation and to prescribe a rate or rates to be observed.

Mr. BACON. And to prescribe rates in order to maintain the relation.

Mr. MANN. That would be prescribing a rate which could neither be changed nor reduced, because if they could reduce it that would not maintain the relation. I do not take any side on the thing; I simply call attention to this.

Mr. BACON. I beg to say that it seems to me to be a far-fetched conclusion.

Mr. MANN. The Commission, under this provision, then, could not be effective, if they can reduce ad libitum.

Mr. BACON. Yes.

Mr. MANN. That would not affect at all, then, discriminations between two points?

Mr. BACON. If the Commission has decided that discrimination between two points must be stopped by observance of a certain relative difference in rates, that relative difference must be maintained.

Mr. MANN. But you would confer power to prescribe rates.

Mr. BACON. That is the one means by which the differential can be determined.

Mr. MANN. They do not say what the differential shall be.

Mr. BACON. They say what the rates shall be.

Mr. MANN. If they can reduce rates from one point, there is no way of preventing discrimination.

Mr. BACON. The party injured in such case can bring a second complaint and obtain a reduction at the competing point.

Mr. MANN. Not unless it is more than a reasonable rate.

Mr. BACON. It is not only a question of reasonableness but of justice. The bill all through proceeds upon enforcing reasonable and just rates, just rates being those that are just with relation to each other. That is one of the fixed principles of the present interstate-commerce act—that the rates shall be reasonable and just. The word “just” means just with relation to each other.

Mr. MANN. No; the word just, I think, means just in itself.

Mr. BACON. Just is one word and reasonable is another. The proceedings of the Commission have regarded the term “just” in that section of the bill as relating to the justice of relative rates, and the term has always been used in that sense in its opinions.

Mr. ADAMSON. Do you think that what is a just rate is not always a reasonable rate?

Mr. BACON. Just in relation to other rates; that is the meaning of the word “just.”

Mr. ADAMSON. It would be reasonable in regard to other rates also?

Mr. BACON. No; reasonable in itself. The rate must be reasonable in itself and it must be just in relation to other existing rates. That is the construction that the Interstate Commerce Commission has given to it in all its cases in its decisions and opinions.

I wish to call the attention of the committee to another provision, which has been incidentally referred to a little more specifically, and that is the one by which the evidence before the Commission in any case is to be treated as evidence in the review of the case before the circuit court, and also to the fact that any additional evidence that either party may desire to introduce must be taken before the Interstate Commerce Commission, the case being referred back to the Interstate Commerce Commission to receive the additional testimony, and certified up to the court; the object of this being the necessity that the full case shall be developed before the Interstate Commerce Commission, instead of a large portion of it being left to be developed before the court.

Heretofore the carriers have often only presented a part of their testimony before the Commission, and the Commission has decided the case on that testimony, and then the case has gone up to a court and the court has taken additional testimony and the case decided by the court has been, consequently, an entirely different case from the one decided by the Commission. This provision in the bill renders it essential for the parties to produce all their testimony before the Commission, and the court must pass upon the case under that testimony as certified by the Commission.

The CHAIRMAN. Why should you make an innovation of that kind? Ordinarily, in criminal affairs in the preliminary investigation I think the defendant is not required to develop his case at all; neither is he before a grand jury; and yet when it comes to the trial no one would say, it seems to me, that he should be prohibited from making a defense. He may have waived an examination and not introduced any testimony in the preliminary hearing. The same way before a Federal commissioner in all criminal matters.

Mr. BACON. The particular reason for that is that the decision of the Commission should be given upon full possession of the facts.

The CHAIRMAN. Facts that they have?

Mr. BACON. The full facts of the case. The Commission is clothed with authority to make its investigation and receive the testimony of both parties.

The CHAIRMAN. Yes; but, after all, it is only preliminary. Under the provisions of the bill the action of the court is confirmatory.

Mr. BACON. The principal object of that is to obviate delay. That has been one of the means that has been made use of by the carriers for producing delay in the courts, and to expedite these cases and bring them to a conclusion at the earliest possible moment, it has been deemed wise by all who have given study to the subject to require the entire testimony to be taken before the Commission.

Mr. MANN. There is one Interstate Commerce Commission and there are quite a number of circuit courts and quite a number of district judges who hold circuit courts. Now, you propose that all testimony throughout the United States shall be taken before one commission.

Mr. BACON. Yes.

Mr. MANN. Instead of permitting it to be taken before any of the courts, on the ground that it will expedite matters to take it before one commission. If you want to take testimony relating to California the Commission has to go out there and take the testimony.

Mr. BACON. That is the course pursued by the Commission. It proceeds to the most convenient point for all parties concerned to take the testimony.

Mr. MANN. It never goes where a Federal court sits.

Mr. BACON. Yes; but when evidence is taken before the Commission and the case is appealed to the Federal court and additional testimony taken, it occasions additional delay in determination of the case.

Mr. MANN. That would not cause any delay by the Commission; that is the charge against the court. I do not suppose it causes any additional delay.

Mr. BACON. It affords an opportunity to the carrier who is desirous of promoting delay to accomplish that purpose.

Mr. MANN. Do you think it would permit any more delay than to permit the defendant, after a case has been heard, to file an affidavit saying he had more testimony to take, and then after the circuit court had certified to the Commission that it needed this testimony and directed the Commission to take it, wait for the Commission to go to California to take that testimony? Which would create the most delay; to do that, or to allow the court to take the testimony?

Mr. BACON. I do not think there would be any material difference in such a case as that; but if this was the law, the actual working of it would be that the carrier would present all his testimony before the Interstate Commerce Commission.

Mr. MANN. If he wanted to delay, why should he?

Mr. BACON. Especially it would be his object, if the order of the Commission is to be immediately effective. It would then be to the interest of the railroad company to expedite it as much as it is to the interest of the public to do so. Let me read you what the Industrial Commission says under the head of "Delay and appeals to courts." It says:

Inasmuch as the final decision in any important case can not be rendered until the courts have passed upon the case, and since the courts will not accept the find-



<sup>1</sup>ngs or evidence before the Commission as final, it has become more and more common for the carriers to refuse to open their cases in full before the Commission at all. \* \* \* The Commission thus is compelled to issue its orders not upon a full and complete hearing of the case, and is obliged, moreover, to have its findings reviewed by the courts upon the basis of entirely new considerations. The cases passed upon originally by the Commission, and later by appeal, by the courts, may be, and often are, essentially different. \* \* \* The entire history of proceedings before the Interstate Commerce Commission is one of delay and inefficiency in the equitable settlement of grievances by reason of the facts above enumerated.

That is the opinion of the Industrial Commission after a thorough investigation of the subject.

Mr. MANN. May I ask—I do not ask for an answer now, however—for the authority of Congress to confer upon the Commission this power of taking testimony?

Mr. BACON. I think you are a better judge of the authority of Congress than I am.

Mr. MANN. I respectfully direct your attention to that. You propose here that a court trying an original case shall not take any testimony, it being admitted that the Interstate Commerce Commission is not a court, and can Congress clothe it with judicial power?

Mr. BACON. Not being a lawyer I can not answer that question. You understand such a question as that far better than I do.

Mr. COOMBS. Does the idea that a court can review a commission of this kind presuppose that it can go into a trial de novo?

Mr. BACON. I do not understand your question.

Mr. COOMBS. Does not the very jurisdiction of the court, the very idea that the court has the power to review the case of the Commission, suppose it goes into facts; is not that inherent?

Mr. BACON. The court is to review the case that has been under consideration by the Commission. The Commission, it seems to me, is entitled to have all the evidence before it renders its ruling, which is to be reviewed, and it is unfair to the Commission, it is unfair to the complainant, it is unfair to the public, that part of the evidence shall be given to the Commission on which its ruling is to be based and then that other evidence shall be submitted to the court.

Mr. MANN. The review imposed in a judicial body over commissions of this kind is for the ascertainment of facts, to ascertain whether justice has been done, to ascertain whether rates have been fixed commensurate to the amounts invested, and all of those questions, and it is held, as I understand it, that that is inherent in the courts. So when you deprive it of its jurisdiction, the right of review, the facts; the right of a trial de novo, it seems to me you get away from the fundamental idea that the court has jurisdiction at all.

Mr. BACON. No; it still has the power to review the case de novo, but under evidence which has been produced before the Commission.

Mr. COOMBS. That is not de novo, though.

Mr. MANN. Here is an authority conferred upon courts by the constitution, practically, a separate branch of the Government, the courts, a power which the Congress can not take away from them. The Interstate Commerce Commission says a railroad has fixed a rate in violation of the act to regulate commerce. You say, that question being presented to the court, the court can not take evidence.

Mr. BACON. The court is particularly instructed by the provisions of this bill, if further testimony is offered by either party and it considers that evidence important, to instruct the Commission to take that additional evidence and pass it up to them.

Mr. MANN. But you say the court can not take the evidence.

Mr. BACON. That is the provision of the bill as it stands. It must be referred back to the Commission for its taking of the evidence, and the Commission may give an entirely different decision on the receiving of the entire evidence.

Mr. MANN. There is no authority for it in the bill; there is no authority for it to give any different opinion at all.

Mr. BACON. The bill certainly provides that after hearing the testimony it shall give its opinion on the case.

Mr. MANN. Not after the second decree.

Mr. BACON. I so understand it.

Mr. TOMPKINS. It must necessarily follow or else that provision would be void.

Mr. MANN. There is no such provision in the bill whatever, but if there were it would not affect the question of the constitutional power of the legislature to say that the court shall not take testimony.

Mr. BACON. Well, that may be easily remedied, if it is erroneous in point of law.

I wish to read further the statement of the Industrial Commission on "Remedies in procedure suggested," in connection with this point. The report says:

What are the remedies proposed for the defects in procedure which have been above described and which are responsible for much of the dissatisfaction with the interstate-commerce act as it stands? \* \* \* In the first place, that the burden of appeal to the courts from orders or findings of the Commission shall rest upon the carriers rather than upon the Commission itself. In other words, the Commission having promulgated its order, the same shall become effective and binding unless the carriers shall bring suit in a United States court within thirty days to compel a review of the case. This, it is alleged, will operate to give finality to the larger proportion of the proceedings of the Commission, making them effective at once. \* \* \* And secondly, that the evidence, pleadings, papers, and exhibits taken before the Commission and certified by its secretary shall be filed with the court and received in evidence. The court may render its decision upon the basis of this evidence, if it please, or it may require that the Commission secure additional testimony. In any event, however, such testimony or papers submitted by the Commission shall be regarded as competent.

I will give way at this point, Mr. Chairman, in order that another gentleman who is here from abroad may present his testimony.

The CHAIRMAN. Before that I would like to ask you a question. You speak of your experience as a business man. In this connection let me ask you what is your business?

Mr. BACON. I am engaged in the grain commission business in the city of Milwaukee, and have been for thirty-five years.

The CHAIRMAN. Now, will you not explain to the committee, if you please, some of the hardships; give us some idea of the wrongs that, in your judgment, are to be remedied by this bill? Of course, you understand, Mr. Bacon, in the line of questions that are asked, that members ask you simply seeking light and in no other spirit. We want gentlemen who have studied this question and understand it in all of its bearings to enlighten us, and especially with regard to certain particular matters that we have less information about, perhaps, than others. So I wish you would give the committee some idea of the character of wrongs and of the remedies.

Mr. BACON. The wrongs are of two kinds. In the first place, the wrongs of discrimination. These pertain particularly to business men—

The CHAIRMAN. Right there. All discriminations are prohibited under existing law, are they not?

Mr. BACON. They are prohibited.

The CHAIRMAN. And there are penalties that may be urged against those who indulge in them under existing law?

Mr. BACON. They are in the case of rebates; but in the case of published rates which are discriminative, the only remedy is by means of complaint before the Interstate Commerce Commission and showing the Commission the fact of the discrimination in those published rates.

The CHAIRMAN. The more serious and frequent complaint in regard to discriminations are complaints of rebates?

Mr. BACON. They are not the more serious in their effects; they are serious as between individuals only. But the other class of discriminations is serious between communities. They debar certain communities from a share in the trade to which they are naturally entitled. The direction of trade is controlled by the rates prescribed by the railroad companies.

The CHAIRMAN. Take the large interests from a city like Milwaukee, in the grain trade. They are there in the nature of rebates, are they not?

Mr. BACON. No; they are more in the nature of discriminations against localities. The Milwaukee Chamber of Commerce brought a case before the Commission on the ground—

The CHAIRMAN. I was asking you the discriminations on these rates on traffic originating at Milwaukee. What is the character of those discriminations—rebates?

Mr. BACON. There are discriminations in rebates on business originating in Milwaukee.

The CHAIRMAN. Are those discriminations that the community of Milwaukee would complain of?

Mr. BACON. Yes, a part of them; not nearly so much as in the discriminations in the published rates, more especially from points in the West from which Milwaukee derives its business, and to points in the West to which its merchandise is shipped.

The CHAIRMAN. You mean discriminating published rates that would favor, for instance, Chicago rather than Milwaukee?

Mr. BACON. More particularly Minneapolis. The rates to and from Milwaukee and Chicago between the points in the West and those places are uniform, though the distance to Milwaukee is less than to Chicago. It is a well-established policy of the railroads to make the rates uniform to those two places, and there are certain circumstances which prevent its operating unjustly toward Milwaukee; but the injustice Milwaukee suffers from is the disproportionate rate charged from points in the extreme West, where grain is produced largely, to Milwaukee as compared with Minneapolis.

The CHAIRMAN. Minneapolis gets the better rates?

Mr. BACON. Minneapolis gets the better rates, and we brought a case, which I spoke of a moment ago, before the Interstate Commerce Commission, and the Commission decided in our favor and declared that the rates to Milwaukee were, from certain territory, from 2 to 3 cents too high as compared with the rates existing at the same time from the same territory to Minneapolis. But Milwaukee got no benefit from this decision, because it was given out just about the time that this decision of the Supreme Court was given which declared that

the Commission had no power to prescribe what change should be made in rates when it found that existing rates were unreasonable or discriminating. The railroad companies declined to obey the order, and the Milwaukee Chamber of Commerce summoned the railroad companies to appear before the Commission and show cause why they should not comply, but their simple defense was that they were unable to agree among themselves upon a less differential in rates than already existed. That injustice and that burden has been borne up to the present time, and will always have to be borne unless some change is made in this law. And that is only one case of a score of them that have come to my personal knowledge during the last few years.

The CHAIRMAN. On those products that go from Minneapolis eastward is there any rate that is compensative or that evens up the general charge that Milwaukee merchants would have to suffer from?

Mr. BACON. That question was considered by the Commission in the determination of the case, and it was decided to the contrary. It was decided that in order to place Milwaukee on an equality this difference which it prescribed should be made, and it reaffirmed this order when this second hearing was held, but no attention was paid to it. I will not say no attention, because a very slight reduction in the rate to Milwaukee was made by the several companies at that time, varying from a cent to a cent and a half a hundred pounds; whereas the difference should be 2 to 3 cents to place Milwaukee on an equality. And the effect of that was practically nothing, for the reason that the difference prescribed by the Commission was barely sufficient to place the two markets on an equality, and the result was that Milwaukee suffered just as much after the partial reduction as before any reduction was made, and the tendency in favor of Minneapolis continued just as great as before, because the difference made was insufficient to affect the route or the destination of the grain from the point of origin as between these two competing markets.

Mr. MANN. Is it not a fact that nearly every large city of the country claims that the railroads running into it discriminate against them?

Mr. BACON. A great many of them do, and that is what the Commission is for—to determine such questions, to hear the evidence of the parties who complain of discrimination and determine whether it exists or not.

Mr. COOMBS. What has been the effect of the action of the Commission upon freight and bringing about a better condition for shippers, generally speaking? Has it been an instrument?

Mr. BACON. During the period when it exercised its authority of prescribing a rate to be substituted it was thoroughly satisfactory.

Mr. COOMBS. But I am speaking about the general results that have been brought about since this came into existence.

Mr. BACON. That is what I refer to. The results were very satisfactory during the ten years I have referred to, but since then they have been very unsatisfactory.

Mr. ADAMSON. I take it that if one point is charged a little higher than another point for the same distance it is claimed as a discrimination unless justified by some local condition.

Mr. BACON. As a general thing, yes.

Mr. ADAMSON. What conditions justify such a differential, aside from competition and the bulk of the business?

Mr. BACON. Distance is taken into consideration for one thing.

Mr. ADAMSON. But I say the same distance.

Mr. BACON. The rates are so intertwined with each other from one part of the country to another that they all have to be taken into consideration.

Mr. ADAMSON. That is what I am trying to find out.

Mr. BACON. Take shipping grain from the country I refer to to Milwaukee and Minneapolis. The rates to Milwaukee and Minneapolis have a certain difference one over the other. The rates to the seaboard from Milwaukee and Minneapolis, which is the final destination of most of the grain, have a certain difference. That difference should be equal in each case—that is, the rate on grain to Milwaukee and from Milwaukee to the seaboard should be equal to the rate on grain from the same point of origin to Minneapolis, added to the rate from Minneapolis to the seaboard.

Mr. MANN. You entirely eliminate Lake Superior.

Mr. BACON. No; Minneapolis uses Lake Superior.

Mr. MANN. But you are simply speaking of the railroad rates; you should remember that Minneapolis has a longer route.

Mr. BACON. I know that. The water rates really control the rate by the railroad.

Mr. ADAMSON. If the two points you mentioned are practically equal distances from the coast, I would like to know what all the reasons are that could be urged to justify a discrimination against one or in favor of the other?

Mr. BACON. Where the distance is practically equal I could not give you any good reason why discrimination should exist.

Mr. ADAMSON. The great trouble, I think, that people complain of is about rates. I do not know whether your new plan of letting the Commission fix rates would remedy it; I want to ask you about it. When I practiced law in the South, south of the Potomac and south of the Ohio had what they called basic points. I do not know whether they have the same plan now or not, but in effect I think it is the same.

Mr. BACON. Largely the same, yes.

Mr. ADAMSON. There are certain cities that have the same rate from either point in that territory, whether their trade goes backward or forward from one to the other, and some of my constituents have made cases and laid them before the Commission and they have died before they were adjusted in the courts. They present this: They say, You start in Washington with a rate the same as New Orleans, and you climb uphill until you get halfway to Charlottesville, or Danville, or whatever town it may be, when you go down again until you reach that point; and then after reaching Charlottesville or Danville you climb up again until you get halfway to Greenville, or Atlanta, or whatever place it is, and then you go down again until you reach Atlanta and strike the same rate of freight; and then you climb up until you get halfway to Montgomery or Opelika; and then you climb over another mountain of rates between Montgomery and Mobile; and then another one between Mobile and New Orleans, and vice versa, back again. That may be an exaggerated statement, but I understand cases like that are in the books.

Mr. BACON. It is precisely cases like that that the committee is intended to remedy, that they are to hear, and they are to decide and determine and prescribe what change shall be made in the rate in order to make them just and equitable.

MR. ADAMSON. The business men in those cities that call themselves competitive or basic points say they are distributing points, say they do a great deal of business, and they say the circumstance justifies them in having a better rate than the little towns along the line. I want to know in the first place what you think about a condition of that kind, and in the second place if your plan provides how that can be remedied.

MR. BACON. It can only be remedied in that way. The railroads have various interests of their own to serve, and in fixing rates between competitive points they are governed more by the probable distribution of business than they are by questions of equity and right. Hence the necessity of bringing these cases before a competent tribunal that can consider all the circumstances in relation thereto and settle them upon principles of equity.

MR. ADAMSON. Is it practical and desirable for the general good that there should be a literal enforcement of the long and short haul idea as to these cities and as to these little towns in between?

MR. BACON. That is too large a question.

MR. ADAMSON. It is one you ought to think about, and one the people are thinking about.

MR. BACON. It has been one, as you know, that has received a great deal of attention during the past fourteen years, and one on which there has never been any substantial agreement reached.

MR. ADAMSON. I supposed you were conversant on all those things?

MR. BACON. I have studied that question and have a settled opinion in regard to it.

MR. ADAMSON. What is it?

MR. BACON. It is that the principle as laid down in the interstate-commerce act should be carried out.

MR. ADAMSON. As to the little towns?

MR. BACON. Yes; but that has been overturned by the Supreme Court upon the ground that elements of competition change the circumstances and the conditions, using the term of the section itself, which are to be considered, whereas the Commission has determined that railroad competition should not be considered; that water competition alone is the one that changes the conditions and circumstances under which that section of the law can be overruled.

MR. ADAMSON. Then, your opinion of the other question I asked. In the event that the Commission should be given the power with which you think it ought to be vested, will the complainant whom I described have any more hope of relief than they now have?

MR. BACON. I think not, on this particular point, because this bill does not propose to make a change in the long and short haul section, the long and short haul clause.

THE CHAIRMAN. Does it not make a change? Suppose the Commission should adopt this idea with regard to the long and short haul clause, would it not result in an entire change of our business system; would it not do away with distributing points, say, like Milwaukee, and would not the merchandise go directly, say, from the great center, a center like Chicago or New York, to the village, and not to Milwaukee at all?

MR. BACON. I think not, sir. The long and short haul provision simply prevents intermediate points from being charged a greater rate than the terminal point. Business is naturally concentrated at great

centers, and the application of the long and short haul principle never can overcome that natural law, that natural tendency.

The CHAIRMAN. The hour for adjournment has arrived and the committee will be in recess until to-morrow morning at 10.30.

Adjourned.

---

THURSDAY, *April 10, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

**STATEMENT OF MR. E. P. BACON—Continued.**

Mr. BACON. Mr. Chairman, following up a question which was asked yesterday in regard to the matter of requiring full testimony in cases brought before the Interstate Commerce Commission and appealed to the circuit court to be laid before the Commission, I have taken pains to get a legal opinion upon that question, which I wish to submit. It reads as follows:

The ordinary rule is that when a case is appealed from a lower court no testimony whatever can be taken in the higher court. This is universally true of appeals from the circuit court of the United States to the circuit court of appeals or to the Supreme Court of the United States. It is also true of all admiralty cases. If the record in the court below is used at all in the appellate court, that record can neither be added to nor subtracted from. If testimony has been improperly excluded in the court below, the case is remanded to that court for further hearing.

The provision in this bill as to the taking of additional testimony was drawn in analogy to the practice before the General Appraisers. Whenever a question arises as to the rate of duty to be imposed, the importer can file a protest, and the Board of General Appraisers then takes testimony and passes upon the protest. If the shipper or the Government desires to question the correctness of the decision of the Board of Appraisers, an appeal is taken to the circuit court. If now either party wishes to take additional testimony, this must be taken before one of the appraisers.

I also wish, in confirmation of a statement I made yesterday that there was a case pending in the Supreme Court that has been pending for a period of nine years, to cite the case referred to. It is the case of the United States *v.* The Missouri Pacific Railway Company, begun in the United States circuit court in 1893. It is still pending in the United States Supreme Court. That was begun nine years ago. It was brought by the Attorney-General upon request of the Interstate Commerce Commission on complaint of Wichita, Kans., shippers.

The CHAIRMAN. Do you know anything about the history of that case; do you know who is responsible for that astonishing delay?

Mr. BACON. I am not familiar with the details of that case.

Mr. MANN. I think that case is not reported by the Commission as a pending case in their last few annual reports.

Mr. BACON. The case was not heard before the Commission. It was carried directly to the circuit court, taken directly into the circuit court, at the request of the complainants, who made their complaint to the Commission, it being the desire of the complainants that it should be tried in the court rather than before the Commission, and, in accordance with the provisions of the interstate-commerce act, the Commission undertook the prosecution of the case through the Attorney-General. What the status to-day is I am unaware.

Mr. MANN. They purport to give a list every year of the civil cases that are pending. Is that one in that list?

Mr. BACON. I could not say whether it was on the list.

Mr. MANN. They reported last year that they had 11 civil cases pending throughout the United States. That is this year; the report is in January.

Mr. BACON. I have a memorandum of two cases that had been eight years in the courts which have been decided. One is the case of the Interstate Commerce Commission *v.* The East Tennessee, Virginia and Georgia Railway Company et al., begun in the United States circuit court in April, 1893, and decided by the Supreme Court in April, 1901. That is known as the Chattanooga case.

The CHAIRMAN. Are you familiar with the history of that case? Do you know the reason for the delay there? .

Mr. BACON. That case, I believe, involved the question of the construction of the fourth section of the law which is commonly termed the "long and short haul" section. There has been a difference of opinion between the Commission and the courts as to the construction of that section, arising from the question as to what constitutes a difference in circumstances and conditions under which, by that section, the Commission is authorized to suspend the operation of the rule. The Commission in this case did not consider that the competition involved was such as to change the circumstances and conditions sufficiently to require the suspension of the operation of that section.

There was one other case before the court at the same time, involving the same question in another court—a United States court—and the two cases were somewhat dependent upon each other, which is a partial reason for the long continuance of that case. Another case which occupied eight years was The United States Interstate Commerce Commission *v.* The Clyde Steamship Company et al., begun in the United States circuit court in May, 1893, and decided by the United States Supreme Court in 1901, called the Georgia commission case.

I wish also to refer to the illustration which was used yesterday, which seems to be rather a misleading one in relation to the putting into effect of the decision of the Commission before the case has been adjudicated before the courts, the illustration being that it was practically hanging a man and then trying him afterwards. Now, while apparently there is some analogy, that will not bear analysis. The fact is that the defendant in this case is deprived of his liberty while the case is being adjudicated in the same manner that a criminal is deprived of his liberty while his trial is in progress.

Now, I will yield the floor to the representative of the National Hay Association, asking the privilege at a later time to conclude my remarks on the subject.

#### STATEMENT OF MR. JOHN B. DAISH, OF WASHINGTON, D. C.

Mr. DAISH. Mr. Chairman and gentlemen, I represent, as chairman of a special committee to appear before you, the National Hay Association. This association is an organization of shippers, some 700 in number, resident in the various portions of the United States, with a membership extending from Massachusetts to the Indian Territory and from Virginia to California.

This committee consists of the following members: John B. Daish,



Washington, D. C.; George C. Warren, Saginaw, Mich.; J. W. Sale, Bluffton, Ind.; C. S. Bosh, Fort Wayne, Ind.; Charles England, Baltimore, Md. Owing to business reasons, Mr. England is the only member able to be present on this occasion, although others may appear before you later.

These hay people—and I am one of them, for the reason that I have an interest in a concern in this city which handles hay—have had a peculiar experience under this interstate-commerce law. Before going into that experience I wish to answer, if possible, a couple of questions which were asked on yesterday and the day before with regard to certain matters. If I understand the question correctly asked by one of the gentlemen, it was in this shape: Taking the first ten years of the history of the Interstate Commerce Commission, how many of their decisions dealt with the question of the reasonableness of rates in proportion to the entire number? It is reported, on page 16 of the eleventh annual report, which is the report for 1897, referring to unreasonable and unjust rates, that “of the 135 formal orders made in suits actually heard from the date of its institution until 1897, 68 have prescribed a change in rates for the future,” making about one-half of the number of all the cases at that time dealing with unreasonable and unjust rates.

Our experience is now in the state of going on. It is not a past experience, and it was indicated by one of the members yesterday that the committee wanted the actual observation and experience of working under this act. I trust it will not be tedious to review shortly the history of hay as a transportation feature. I do not care to go into it fully at all, but simply enough to give you an outline of what we have been through from 1887 until the present time. In conformity with the act the carriers have put forth what is called a classification; that is, certain articles go first class, or double first class, and others go second class and third class, and so on all the way down to the lowest class, which is the sixth class. From 1887 to 1900, with a short period intervening of about six weeks in 1894, hay was transported at this lowest or sixth class rate, 25 cents per 100 pounds from Chicago to New York.

Shortly prior to January 1, 1900, for the various railroads in the territory south of the Great Lakes and extending from the Mississippi River to the Atlantic Ocean on the east, this committee determined that it was for the best interests—I suppose of the carriers—I do not know—to place hay in the fifth class, and that rate is 30 cents per 100 pounds from Chicago to New York. Not only was a change made at that time in the rate of transportation of hay, but I think also of some 800 other articles.

This was felt to be an injustice. This advance from 25 cents to 30 cents was felt to be an injustice and a discrimination against hay as a shipping commodity. The chairmen of our various committees appeared before the official classification committee and protested. They said: “You are wrong; you will not have hay moved”—but all without avail.

The matter subsequently was taken up with the Interstate Commerce Commission and a petition very like a bill in equity was presented to the Commission and filed on the 6th of last August. Issues were joined and testimony was taken on behalf of the complainants about the middle of November. Testimony for the carriers was given in this city in

December. The case was argued commencing on the 14th of February, and of course the decision in that case is not yet rendered. What I have already stated is practically the history leading up to the present time. I take it that now it becomes reasonable and right that we should speculate on first, what would be our position as complainants in this case were it not for the decisions of the Supreme Court in 1897—what would be our position presuming that we had a decree in our favor at this time—and then what would be our position, and all the way along, in the position of carriers under the proposed amendment to this act?

Suppose, now, that we have a decree or order in our favor, and that the year instead of being 1902 is 1896. The Commission, in accordance with the statute, orders the several carriers to cease and desist from charging the unlawful rate on hay. The carriers naturally would say—it is their side of the case: "The Commission are wrong; hay is not being discriminated against. If we see fit to carry grain from Chicago to New York for 15 cents or 17½ cents per hundred pounds, that is our business, and we can carry hay for 25 cents or 30 cents, and that is also our business; and, gentlemen of the Commission, while we respect your views, you are seriously in error, first upon the facts and secondly upon the law; therefore we will see you enforce this."

They retain the rate at 30 cents per 100 pounds on hay between Chicago and New York. The Commission think they are right and they proceed to the circuit court, and the case is entitled "The Interstate Commerce Commission *v.* The Lake Shore and Michigan Southern and other railroads." The object of proceeding there is to compel in some way, shape, or form obedience to that order. There it lies for such length of time as the counsel can prevail upon the court to stay matters. We all know how that can be done, on plea of illness of counsel, or other reasons can be given.

Now, presume that the ruling of the circuit court is that the Interstate Commerce Commission is right; but right or wrong, it is immaterial for the sake of this illustration. The case goes to the court of appeals and from there to the Supreme Court of the United States, and it is immaterial for this illustration whether the contention of the Interstate Commerce Commission on the petition of the hay association is correct or not. Considerable time has elapsed pending these several appeals and reports. In the meantime hay has been carried, and the freight has been exacted at the rate of 30 cents per 100 pounds from Chicago to New York, and from points east of Chicago it takes a proportionate rate. Of course there is this chance as well, that the carrier may have said, "We were not justified in advancing this rate."

Mr. RICHARDSON. Does not the railroad give a bond when it takes that appeal?

Mr. DAISH. No, sir.

Mr. RICHARDSON. To the circuit court?

Mr. DAISH. No, sir; I understand not.

Mr. RICHARDSON. The rule is different there, then, from all other rules in appeals taken to the courts of appeals. Every one of them requires a bond.

Mr. DAISH. I so understand.

Mr. RICHARDSON. How do they get up there? Do they not give some security for costs?

Mr. DAISH. I think not. They may give a security for costs, but certainly no security to indemnify any shipper on the excess charged.

Now, then, presume that the upper court should determine that we were right in our contentions. Suppose now, and it is possible as I was about to state, that the company had thought the judgment of the Interstate Commerce Commission correct, and that the contention of the original complaint was right. Under those circumstances they would obey the order of the Commission, and hay would be transported at 25 cents per 100 pounds. I am not familiar with statistics showing the number of orders which the carriers have refused to obey. I have heard it stated, however, on fairly good authority, that between 1887 and 1900 there had been issued against carriers 22 formal orders or decrees, and that of those 22 orders but 7 had been obeyed by the railroad companies.

Now, let us transfer the case to another period of time, and instead of considering 1896 consider what might be done now. The carrier knows, as we know, that the Supreme Court of the United States has said that the Interstate Commerce Commission can say to Mr. Railroad: "You have done wrong in the past, but neither we as a Commission nor any other body outside of Congress can prescribe the rate for the future. No court can say anything to you about what rates you shall charge on or after this or any subsequent date. You have taken from the pockets of the people an unjust and unreasonable charge, but we can not prohibit you from doing it in the future, because the Supreme Court of the United States has said that we can only determine what was wrong in the past; and while we strongly recommend to you, and in fact order and decree you, to cease and desist from charging this unreasonable rate, yet we can not compel you to do it."

Well, what would we all do under those circumstances? The father says to his little boy: "Boy, you were wrong in telling that story." The boy tells another one; and I don't know how it is with most boys, but I know that what I got for doing that when I was a child was I got whaled. The Interstate Commerce Commission can say to the carriers, "You are wrong, but we can not whale you. You can keep on and do as you please. I will endeavor to use my best arguments to show you that you are wrong. We have been all through this case, and we have heard testimony for two or three weeks, and we have weighed carefully all the interests involved. We know there is a large stretch of country to be considered and that the amount of the traffic is enormous, and we have weighed all that, and we do not think that the circumstances and conditions to-day justify your charges in this particular case."

But the carrier, or any one of us, would simply say, "If I can get 30 cents I am not going to take 25 cents." It is a business proposition. In fact this entire subject of interstate commerce is more a business proposition, it seems to me, than it is a legal one. I will agree with anyone that there are certain legal features connected with it, certain matters that constitute a law to be considered, but it is a straightforward business proposition, with an eye to the interests not only of the public but to the interests of the carriers.

MR. RICHARDSON. Will you allow me to interrupt you there for a moment?

MR. DAISH. Certainly.

MR. RICHARDSON. According to your theory that you have just been

advancing about hay, supposing that you had the authority, as you are contending now, to have a summary judgment and execution; that is what you are contending for?

Mr. DAISH. Yes, sir.

Mr. RICHARDSON. And then let the appeal go along outside of that. Suppose you had that, and the Commission had fixed the rate at 30 cents, and the railroad were to take an appeal and finally get up to the Supreme Court of the United States, and the Supreme Court of the United States should say that the Commission was wrong. You would have gone on in the meantime, and you had fixed the rate at 25 cents. What would you do in the matter of your error, in case the court was right?

Mr. DAISH. There is no provision in the fourth amendment for a case of that kind.

Mr. RICHARDSON. But common justice would——

Mr. DAISH. I am coming to that point. The common justice of the hay case is this, that for thirteen years hay was carried at 25 cents per 100 pounds, and that was one of the arguments advanced before the the Commission, that if it could have been carried for thirteen years for 25 cents it can be continued to be carried at that price. There is no provision, as I take it, in the proposed amendment to provide for the case which you have cited.

Mr. RICHARDSON. Then would it not mean this, that you had improperly and utterly without law made that railroad take rates that you could not possibly refund?

Mr. DAISH. That is right.

Mr. RICHARDSON. I thought so.

Mr. DAISH. But at the present time the law is such that they make us pay rates that they can not possibly refund.

Mr. RICHARDSON. One wrong does not justify another.

Mr. DAISH. Yes, that is true; but in the case cited it is our ox which is being gored and in the other case it would be their ox that was being gored.

The CHAIRMAN. Before you leave that illustration you gave, I want to ask you what would be the difference in the compensation for hauling a carload of hay or grain at the rate of 25 cents and at the rate of 30 cents; or 17 cents and 25 cents?

Mr. DAISH. The minimum weight of a carload of hay is 20 tons, though the maximum is much more; but the average weight is 22,000 pounds, or 11 tons. Figuring, however, on the minimum weight, the freight charge from Chicago to New York would be \$60 for a car of hay or straw. The maximum weight for a carload of grain, the average 36-foot car, is 40,000 pounds. At 17½ cents that would be \$70. At the time the petition was filed the rate was 15 cents, making the rate per car from Chicago to New York on either grain or hay about \$60.

Mr. CORLISS. What is it now?

Mr. DAISH. Now it is 17½ cents.

Mr. CORLISS. And that corresponds with the increase made in the rate on hay?

Mr. DAISH. No; that is, I take it, a winter rate. It was put into effect about October 21.

Mr. ECKHART. A published rate?

Mr. DAISH. Yes, a published rate.

Mr. MANN. That is not the rate that they charge.

Mr. DAISH. We had something to say on that subject in the hay case, namely, that the rates on grain were not according to the published tariff, but less, and I would not want to stand here and say that we proved it conclusively, but from some developments since our hearing it has been shown, I think, that certain parties are accorded special rates on grain.

Mr. MANN. It was admitted in the Chicago hearings recently that everybody was accorded special rates.

Mr. DAISH. That, I think, refers to certain cities. I doubt seriously if there are, and, in fact, I will state from what I know of the grain business of this city that no cut rates are in force in Washington, nor have there been in five or six years, at least.

Now, to come back to this supposed order and decree in favor of the Hay Association at the present time. As I said, the carrier feels that he is not compelled to do a certain thing—namely, to transport hay from Chicago to New York for 25 cents—and just as naturally as he feels that he is not compelled to do it, just so naturally is it human nature—and I do not blame him for it—not to do it. If the merchant can sell his goods for \$1.50, he will not sell them for \$1.40. If the street cars could get 10 cents per passenger, they would not sell six tickets for a quarter. There are certain things that dominate business, and one of those things, aside from what my neighbor may do, aside from straight competition, is some rule of law or action which may compel me to do a certain thing.

Now, transfer, by way of supposition again, this decree in favor of the complainants, and presume that this bill which we have been considering has become a law. The order in that case is slightly different, bears at least a different name, from what it would bear to-day, and it takes effect on a particular day, not less than twenty days beyond the time that the order is promulgated. The Interstate Commerce Commission, we will suppose, enters its decree and serves it upon the 10th of a given month, and so it will go into force and effect on the 1st of the succeeding month. Presume, now, two things: Either that the judgment of the Commission is radically wrong, that so seriously are they wrong that he who runs, and he who looks over the record, could see that, or that it would not take an attorney or a man of any particular ability at all, but it would take merely a business man, and suppose they are almost absolutely wrong, and ought to know it themselves, what may the carrier do under this act?

He proceeds to the circuit court, shows to the circuit court that this decree is not in accordance with the facts; that it is diametrically opposite to what was shown by both parties to the original proceeding, and that it is utterly and absolutely contrary to the law. Thirty days then intervene, and if it appears to the circuit court within that thirty days that the Commission is absolutely wrong, that the case is anything that I suppose it to be, the circuit court may suspend the operation of that order. Furthermore, suppose some serious change happens, as it may happen, in the shipment of a single article. Take some article that does not move in large quantities, and suppose there was some new method of transporting that, some new way of getting more into a car, the carrier has a right under this act at any time to come forward, not only within the twenty days or thirty days succeeding, but fully to the extent of the three years' time for which the order shall be in force and effect, and ask the Commission to suspend or modify

their decree in a certain case rendered on, say, the 10th day of this month that I have supposed.

Suppose, however, that instead of its appearing that the Commission is radically wrong, that it is a close case, that it is a case about which honest and upright men would differ; suppose it is more a question of judgment, or more a question of belief in witnesses who are very close together, and yet there is a little line, a fine line of division, and one man will say, "I believe that Smith told the truth," and another will say, "I believe that Jones is talking more honest"—suppose it is a close case. The circuit court would have jurisdiction first, and it would be heard there and then go on up through to the Supreme Court of the United States.

Right here, as a broad line of demarcation between the law as it exists to-day and the law as it exists under this method, it will be recalled that it was asked, or practically asked, what would be the status of a charge under the present act. At the present time this status would be 30 cents, because the carrier says, "I refuse to do it at 25 cents." Under the act, presuming, as I have presumed all along, a decree in favor of the complainants, the charge must of necessity be 25 cents. Suppose, upon the other hand, that the decree of the Commission after the passage of this act is a correct one and in favor of the complainants. The carrier may again go into the circuit court and follow the same line of procedure. There is a third horn to this dilemma, and it prevails all the way through, not only in 1896, but as well at the present time, and would also if the present proposed amendment should become a law.

If the shipper proceeds upon complaint before the Interstate Commerce Commission, and it is decided there by reason of the facts or law that the complaint is not well founded, the shipper has absolutely no remedy before the court in that case. The fact was referred to yesterday that almost all of the cities complain of discrimination against that particular city. There have been quite a number of such cases. Baltimore fears that New York has a better rate. Some of the Southern cities, cities farther south, think that Baltimore has a better rate than they do. Boston thinks that New York is not entitled to her present low rate on grain, because it cuts the Boston people out of the export business.

But suppose a case of that kind, suppose the Boston people, for example, say, "We are being discriminated against," and suppose that after a complaint and hearing, extending over from three to five or six months, the Commission should determine that the Boston people are wrong. It is the highest place to which the Boston people can go. They can not appeal to the circuit court, nor the court of appeals, nor the Supreme Court of the United States, nor any other place. It is a peculiar thing that the original act provided for appeals on behalf of the carrier alone, probably a wise provision. But suppose that the Commission should decide in favor of the complainant—and I have considered the term "complainant" all along to refer to the shipper or dealer and not to a railroad, although there are cases, you will recollect, before the Commission where one carrier has brought suit against another—it seems to me that unless the Commission should be radically wrong it would be to the best interests of all of the parties concerned.

It was asked what has been the effect of the present interstate-com-

merce act. On behalf of the National Hay Association—and the board of directors are well aware of about what I shall present to this committee on this occasion, and the greater portion of the membership have also been notified, scattered though they be—we consider the present interstate-commerce act one of the best acts on the statute books. For the ten years immediately preceding 1897 there was peace and harmony, but it seems to us that since 1897 there has been more cutting of rates and, I personally believe, more underbilling, and that the conditions extant to-day in the general shipping world are worse than they were prior to the enactment of this statute simply because of the want of enforcement of the statute.

Mr. COOMBS. In what way does the cutting of rates hurt the shipper?

Mr. DAISH. It does not hurt the man who has the rate, but it hurts his competitor.

Mr. COOMBS. How?

Mr. DAISH. Suppose, for example, Mr. Bacon to be a shipper from Chicago, and myself to be his confrère or brother on the board of trade. Suppose Mr. Smith in New York desires a little grain—50 or 100 cars. The published tariff is  $17\frac{1}{2}$  cents. Then suppose that a special rate, for example, be made to Mr. Bacon at  $14\frac{1}{2}$  cents. Mr. Smith can buy the grain of Bacon, Mr. Bacon can, as we say, split the freight rate, give Smith a cent and a half per 100 pounds advantage, keep a cent and a half for himself, and I can not deal with him.

Mr. COOMBS. You mean with reference to competition between middlemen that one would have an advantage over another?

Mr. DAISH. That is one result.

Mr. COOMBS. That is about the substance of it.

Mr. DAISH. That is one result.

Mr. COOMBS. I asked you because I do not understand these questions much.

Mr. DAISH. Well, the question of cut rates and advantages comes entirely, or largely, under the head of discrimination.

Now, discrimination, as I understand it, in interstate-commerce business is of three kinds: First, a discrimination against a particular article of traffic; second, the discrimination against a particular locality, and, third, a discrimination against individuals.

To illustrate: I have been referring in this hay case to a discrimination against a particular commodity. Suppose, for example, that the rate on sixth-class commodities from Cleveland to New York is  $21\frac{1}{2}$  cents. Suppose the rate on second-class commodities from Saginaw, Mich., to New York is  $27\frac{1}{2}$  cents. Now, the distance, if I recollect the mileage correctly, from Cleveland to New York is 593 miles, and from Saginaw to New York is 702 miles. It may be—I do not say that it is, though it would seem—that the 6 cents additional for that 108 or 109 miles is a pretty heavy charge; and presuming that one of those charges is too heavy, the other is too light in comparison with the former. That would constitute a discrimination against a locality. The man who had grain or hay or some other commodity at Cleveland for shipment to New York would be enabled to put his commodity in the market at a relatively less basis, a very much less basis, than a party who had his commodity in Saginaw and wished to have it delivered in New York.

As for discrimination between persons, which is the third class of

discriminations as I have mentioned them, that would be where two parties, to use the language of the act, "under substantially similar circumstances and conditions," two persons in the same town, engage practically in the same class of business, one of them receiving a rate to a certain town of, say, 20 cents, and the other being compelled to pay a rate of 25 cents. The former, as we would say in business, would have the bulge on his competitor. The former would be buying all the grain at this little crossroads because he could pay to his farmer friends a quarter of a cent or a half a cent or a cent a bushel more. The latter, the man who would have to pay the higher rate, had better close up his place and go out of business, because he would not be on an equal footing. I do not mean in regard to his talents and his ability to do business, but because of his inability to compete with the other merchant, whether on goods coming out from the city or going into the city.

Suppose the case of a dry-goods merchant. Freight is an inconsiderable thing with dry goods, but suppose that one merchant should be compelled to pay 30 cents a hundred pounds to bring dry goods to his place, and his neighbor, bringing a greater number of carloads than the first man, would be allowed to have it come through at 15 cents per hundred pounds. Manifestly there is an injustice to the first party.

The CHAIRMAN. Now, suppose the larger rate is a fair rate. Suppose that 30 cents is a fair rate to the carrier. The other man gets his goods shipped at 15 cents. He is able to sell that much more, and the public, his customers, get that benefit. Who should complain?

Mr. DAISH. There is nothing wrong with that, Mr. Chairman, I take it, except the last few words of what you have said, "The public gets the benefit." They do not. My experience is that they do not.

The CHAIRMAN. You say the customers of a man doing business getting a 15-cent rate do not get the benefit?

Mr. DAISH. The party who pays the 15-cent rate gets the benefit, as a rule.

The CHAIRMAN. Do not his customers get it?

Mr. DAISH. No, sir; I think not.

The CHAIRMAN. Then, there is no harm done, is there, in the competition, or to the competition, of the second man?

Mr. DAISH. There is no harm to the man who receives the 15-cent rate, but the man who pays the 30 cents must go out of business sooner or later.

The CHAIRMAN. But if this man who gets the lower rate does not give an advantage to his customers—he sells to his customers just as though he was paying 30 cents—and how does that affect their relative or respective businesses?

Mr. DAISH. I perhaps should change my remark a little. I do not mean to say that he does not give any of it to the public; but he does not give much. There is just a quarter of a cent or an eighth of a cent or a sixteenth of a cent which may be necessary to split a cargo of grain, and a sixteenth of a cent per bushel is a comparatively small portion of the cargo, and it has been stated by the public press that comparatively a small proportion of the grain goes at the published rates, and so far as I know—

Mr. MANN. It is openly conceded that the grain rate from Chicago for the last year has not been the published rate, but that everybody has shipped grain at a less rate than the published rate. There was no preference given to anyone.



Mr. DAISH. Well, I will say this, that I know shippers in Chicago who are to-day paying the published rates.

Mr. MANN. They may be to-day; they were not yesterday. They have just had an exhaustive hearing on this subject in Chicago, and the Interstate Commerce Commission reported that the special rates were given to anybody and everybody without any preference.

Mr. COOMBS. I confess my ignorance about these things. Supposing, as you say, for certain things that one man was paying 20 cents for 100 pounds for certain shipments to certain places. Now, there is a discrimination made in favor of some one, and a rate is given to him of 15 cents. Now, if that is put into operation and practiced, as it must be, does not that in itself have a tendency to reduce freights generally all along the line on those particular things, and all along the line would not that naturally be the tendency?

Mr. DAISH. I think it would, in a measure. There is a general tendency, and has been for a number of years, for freight rates to be reduced. Freight rates, generally speaking, are probably less to-day than they have been for a number of years. There has been a gradual decline. This is shown, in a way, by the decrease of the ton-per-mile rate.

Now, this question of cut rates I have referred to——

The CHAIRMAN. If it will not disturb you, I would like for you to make, for the purposes of our record here and for the benefit of the members of the committee, your argument in behalf of your complaint with regard to the hay, as shown by the illustration of the hay and the grain. As I understood you, you paid—I say you——

Mr. DAISH. That is right.

The CHAIRMAN. You paid \$60 per car for your hay?

Mr. DAISH. Yes, sir.

The CHAIRMAN. The grain dealer paid \$70 for his car. Now, what is the complaint?

Mr. DAISH. I argued that case quite fully before the Interstate Commerce Commission. I understand that my argument leading up to that, and the entire case, has not yet been transcribed by the reporter. I can submit that as an entirety or go into the figures at the present time, as the committee may wish.

The CHAIRMAN. You will have it in a few days?

Mr. DAISH. I do not care to juggle with figures unless I know positively the basic figures upon which I argue. I might make a mistake with respect to the facts, and I would prefer to submit that in writing, or at least to get some data which I have in my office on that matter. I shall be pleased to submit to-day or to-morrow a written statement covering that subject.

I will, however, say this, that while it appears that \$60 is the rate for a carload of hay from Chicago to New York, and \$70 is the rate for a carload of grain, the carrier transports twice as much grain as hay. That calls for some increased cost. Then when you ascertain the number of cars which will make up a train load, and figure the value of carrying a train of hay or a train of grain from Chicago to New York, the figures are practically these, that the revenue derived from a train load of grain is about \$3,200, while the revenue derived from a train load of hay is \$4,100.

Just one word more, if you please, at this time, and then I shall ask to give way to a gentleman here from outside of the city. I wish to

say this in regard to cut rates; cut rates not only affect the individual, not only affect Smith and Jones, competing parties in Chicago, but suppose that the rates from Joilet to Kankakee are practically the same as from Chicago to the seaboard. Suppose, then, that instead of the 17½-cent rate from Chicago to New York it is made 15 cents, an elevator at Joilet and Kankakee and other places paying 17½ cents, the grain will go by Chicago, and these smaller places, even though they may have large elevators, will not do any business.

Mr. MANN. Does not the present law absolutely cover the question of cut rates?

Mr. DAISH. Yes, sir; but it is on the question of enforcement of that, I take it—

Mr. MANN. We have nothing to do with the enforcement of the law. You should address yourself to the Interstate Commerce Commission, which has full authority now to pursue all inquiries in reference to cut rates.

Mr. DAISH. If you will refer to the recent proceedings in Chicago, in Kansas City—

Mr. MANN. I refer to the law. You are not asking any change here with reference to cut rates, as I understand.

Mr. DAISH. I was simply answering the question asked me. The bill does not deal with cut rates.

Mr. RICHARDSON. Let me ask you about the legal procedure under this bill that you are advocating. I think it is important in this matter as to how you proceed in court.

Mr. DAISH. Yes, sir.

Mr. RICHARDSON. As to the rights of plaintiff and defendant. Now, as I understand from you, when the Commission certifies to the civil courts its decision and the rate that it has fixed for the railroads to comply with, the Federal circuit court, if it supposes that the Commission was wrong in that thing, I understand that your idea is, and the law is, as I understand it, that the Commission can go afterwards and take additional proof, reopen that case, and, if it does not want to take additional proof, then it can right there, on the facts and the evidence that it had before, make another order without any additional proof?

Mr. DAISH. Without any additional proof there may be a modification of the decree—

Mr. RICHARDSON. Hold on a minute. It can make another order, and if that order is certified to the Federal court and is vacated it can make another, and so on, and it is ad libitum to annoy that railroad company.

Mr. DAISH. It is ad libitum to annoy the company, but Mr. Heins, in his recent monograph on that subject, called attention to the slackness of the Interstate Commerce Commission in not taking a similar decision before every circuit court in the United States. Suppose that one court has determined that it is wrong, why not submit it to some other circuit court and get another decision, and not abide by the decision of this one man?

Mr. RICHARDSON. There is no end to the power of the Commission to review an order.

Mr. DAISH. No end of it.

Mr. LOVERING. Are carload rates given on hay?

Mr. DAISH. Yes; it is all by the hundred pounds, you understand.

Mr. LOVERING. By the 100 pounds?

Mr. DAISH. Yes, sir.

Mr. LOVERING. And does it make any difference whether it is in ordinary packed bales or highly packed bales?

Mr. DAISH. There is no difference in the rate, whether by the ordinary bale, or the so-called Lowry bale, which is used for export.

Mr. LOVERING. It is so much per 100 pounds?

Mr. DAISH. Yes, sir; 30 cents.

Mr. LOVERING. And how much is the Lowry bale?

Mr. DAISH. That runs, I believe, 45,000 to 60,000 pounds. It is being used, I believe, in the army service in Cuba and the Philippines, but the fiber of the bale is badly torn in the process, I believe.

Mr. LOVERING. The rate of freight is the same?

Mr. DAISH. Yes, sir.

Mr. LOVERING. You do not get any advantage by its being close packed?

Mr. DAISH. No, sir. I will now yield to Mr. Eckhart, Mr. Chairman, with the privilege of touching hereafter not only upon the matters that the Chairman has just referred to but also upon some of the constitutional features at a subsequent meeting of the committee.

#### STATEMENT OF MR. B. A. ECKHART, OF CHICAGO, ILL.

Mr. ECKHART. Mr. Chairman, I represent the Chicago Board of Trade and the Illinois Manufacturers' Association. I will not attempt to discuss the different features of the bill or whether, if it become a law, it would conflict with the Constitution. I shall assume that the bill as presented, and which is now pending before your committee, has been carefully prepared and, if enacted into law, would be constitutional. That question, I presume, has been fully discussed by the gentlemen who have preceded me and who have given that feature of the subject careful consideration.

I will confine my remarks briefly to the evil that the milling industry of this country has been suffering under. I am engaged in the milling business at Chicago.

Our complaint is substantially this: The transportation companies for a number of years have been practicing rate discrimination against flour for export in favor of wheat for export.

There are about 9,000 mills in this country, scattered over 33 different States. I believe, according to the United States census of 1900, our industry stands fifth in the value of product, amounting to about \$550,000,000 to \$600,000,000 per annum.

The transportation companies for the last five or six years have carried wheat from the West to the seaboard very often at an abnormally low rate of freight, or, in other words, a secret cut rate. They have carried it at such a low rate of freight that the foreign millers were able to manufacture flour on the other side for a great deal less money than we could afford to lay it down for there.

The American miller can hold his own against the world if he is on an equal footing, notwithstanding the fact that we pay higher wages than any other country to our employees; we have never asked for any protection on the part of our Government or any special privileges, and we enjoy none.

Unlike many other manufacturing interests of this country, we are not protected, and we do not need protection providing our own transportation companies, the common carriers of this country, will treat

us fairly and put us on an equal footing with the buyers of wheat on the other side.

We are also unlike the French millers, who are protected by the French Government to the extent that they are paid a bounty or drawback for every barrel of flour that they ship out of France, which equalizes practically the tariff that is imposed by the French Government on the importation of wheat to that country.

The CHAIRMAN. What is that tariff rate?

Mr. ECKHART. I do not know that I am prepared now to give you the exact rate, but approximately it is 36 cents a bushel. I expected to look up the correct data before I appeared before your committee to-morrow morning.

The CHAIRMAN. What is the bounty?

Mr. ECKHART. I do not know that I can say definitely, but it is about equal to the amount of the tariff that is put on wheat.

Mr. LOVERING. Is that called a bounty?

Mr. ECKHART. It is a bounty or drawback.

Mr. MANN. It is the same as our drawback?

Mr. ECKHART. It is the same as a drawback.

Mr. LOVERING. The same as our drawback. But why is it a bounty if it is an amount that has been previously paid?

Mr. ECKHART. Well, I do not know that there is any difference between a drawback and a bounty, because the result is the same.

Mr. LOVERING. A bounty is a free gift out of the treasury of the government, for which it has received nothing in the first place.

Mr. ECKHART. Yes, sir; but the effect is just the same on the milling business.

Mr. MANN. I beg to differ with you. They pay on flour exported, whether it is made of American wheat or French wheat.

Mr. LOVERING. I understand that, but they can not receive a single franc bounty in excess of the duties which they have paid.

Mr. ECKHART. No.

Mr. LOVERING. And they have a system of certification of the payment of that duty, and they can draw against that in making their exports.

Mr. ECKHART. That is correct. It is just the same as the importation of jute bagging to this country. When we ship out flour in jute bags, exporting it, we get a certain amount of the value of the bag in rebate.

Mr. LOVERING. If we can identify it?

Mr. ECKHART. If we can identify it; yes, sir.

Now, the evil, as I stated in the outset, that we are laboring under is the discrimination, not so much in the published rate, as in the cut rate, which is given the shipper from time to time, and which is in many instances abnormally low, far below what the transportation companies receive for carrying flour, and in effect it practically prevents the millers of this country from exporting flour unless they are willing to do so at a loss, and that has been the practice largely for the last two or three years.

Many of the millers who have had a trade established on the other side and desire to hold the trade against any competition sell flour at a loss. I have done so myself. I have exported many thousands of barrels at a loss of from 5 to 7 cents a barrel rather than let my trade get away.

Mr. LOVERING. You consider 5 cents a barrel a good profit?

Mr. ECKHART. Less than that.

Mr. LOVERING. Four cents?

Mr. ECKHART. We consider  $2\frac{1}{2}$  cents a good profit for export flour.

The CHAIRMAN. Practically, the remedy which you seek is to require an additional charge to be made by the railways, by the transportation companies, on wheat?

Mr. ECKHART. We desire them to make a reasonable differential between flour and wheat.

The CHAIRMAN. You said their present rate was abnormally low?

Mr. ECKHART. The cut rate.

The CHAIRMAN. And less than it ought to be carried for?

Mr. ECKHART. Yes, sir; less than it ought to be carried for.

The CHAIRMAN. Now, in order to benefit your industry, you want to compel the railways to charge the wheat shippers a large sum?

Mr. ECKHART. Well, no.

The CHAIRMAN. That is practically what you want?

Mr. ECKHART. Not at all. We want them to charge a reasonable differential—that is to say, if transportation companies, by reason of the fact that the cars are much larger to-day, so that they can load 80,000 or 100,000 pounds in a car, where the maximum capacity used to be 30,000 to 40,000 pounds, and because of the fact that the rolling stock is much heavier and their engines larger, they can afford to make a lower rate than they formerly did in transporting the products from the producer to the consumer and to the markets of the world. We desire to have them treat us equitably and fairly as to the differential between flour and wheat.

The CHAIRMAN. These facilities for movement apply to both classes of shipments?

Mr. ECKHART. Yes, sir; to both wheat and flour.

The CHAIRMAN. How, then, does that answer the question which I put to you?

Mr. ECKHART. It answers it in this way: That it is unfair and unjust to a great industry of this country to compel us to pay a tariff rate of  $17\frac{1}{2}$  cents a hundred on flour from Chicago, for instance, and at the same time to carry wheat on a secret cut rate of 8 or 10 cents per 100 pounds. It practically means confiscation of so much milling property. We do not care what the rate is, any rate, if it is equal and just, will be acceptable. The average American citizen and manufacturer in the conflict of business life is always willing to run his chances with his competitors on an equal footing, but can not hope to do so when his competitor has been granted a special privilege.

The CHAIRMAN. Well now, there must be some reason for this remarkable differential that you have spoken of— $17\frac{1}{2}$  cents as against 8 or 10 cents. What is that reason?

Mr. ECKHART. Well, the railroad companies and transportation companies and their agents tell us that it costs a little more to carry flour than to carry wheat. The question was fully gone into a few years ago before the Interstate Commerce Commission at Chicago, and after the evidence was heard on both sides the Interstate Commerce Commission finally concluded that it possibly did cost a little more, but the differential was nominal. While it is true that it costs a little more to discharge or unload a car of flour in New York than a car of wheat, because the wheat is sometimes unloaded into an elevator from the car, there is a lighterage charge which practically equalizes it.

Then the railroad companies also contended that the millers do not load the cars as heavily as they would load them with wheat. That question we controverted, and showed conclusively that when they furnish us large cars we load them, as a rule, to the maximum capacity, for it is cheaper for the miller to load a large car than a small one, as a shipper invariably fixes up his own car, cleans it out and places it on the track, and loads it; whereas, in case of wheat shipment, the railway company is obliged to furnish inside car doors and clean it and fix up its own cars.

The Interstate Commerce Commission, after considering the question at the hearing at Chicago, determined that the railway companies were justified in making a slight differential between the shipment of flour for export and wheat for export, and they made such a recommendation, but the transportation companies paid but very little attention to the recommendation, and continue to make cut rates to shippers of wheat.

The CHAIRMAN. Is there not some other reason, must there not be some other reason, where these slight differences of cost exist, and where you find such an extraordinary differential as you have spoken of?

Mr. ECKHART. Yes sir; but we have no specific information upon that point, except a general idea.

The CHAIRMAN. What is your opinion?

Mr. ECKHART. I have an opinion, derived from information furnished by the transportation companies themselves, when they were asked why they made such a difference. The information was invariably this: "Our competitor has taken 100 or 150 carloads of wheat to transport to New York, Baltimore, or Philadelphia. We know that he has got that wheat, and we know that he did not get the tariff rate. We are not going to let our competitor transport all of this merchandise to the seaboard; we are going to get some of it," and invariably they would meet their competitor, and they would usually say, "If we were not obliged to make this cut rate in order to get a portion of this merchandise to carry we would not make this low rate."

The CHAIRMAN. Does not that reasoning apply to the flour as well as to the wheat? Would not the same inducements operate upon the railway in the transportation of one kind of freights as well as that of the other?

Mr. ECKHART. That has not been our experience.

The CHAIRMAN. What is the reason of that? What is your idea of the reason?

Mr. ECKHART. The reason of that, so the transportation companies tell us, is that they can get a large volume of wheat to transport—say 100,000 or 150,000 bushels, which is a large tonnage—and their agents are after large tonnage; they want to make a showing for their several companies. That is the argument they advance.

The CHAIRMAN. Now, while that argument might apply to Chicago, it certainly would not apply to Minneapolis, would it?

Mr. ECKHART. Well, yes.

The CHAIRMAN. Because undoubtedly there is a great deal more flour to ship from Minneapolis than wheat to ship out.

Mr. ECKHART. Yes; but Minneapolis has suffered in common with all the other sections of the country from that very same cause. They have been cut out as well as the mills in Iowa, Illinois, Nebraska, and

Kansas, or any other wheat-growing State. They have the same complaint to make in that respect.

Mr. LOVERING. Is there any difference in the hazard attending the shipment of flour and wheat?

Mr. ECKHART. No; I think not. I think the loss in transit of flour is less than of wheat, because there is no leakage. There is some little loss in transporting wheat because of the leaky cars, which does not apply to flour.

Mr. MANN. Can you tell us what is the relative cost of transporting wheat and flour by lake from Chicago east?

Mr. ECKHART. What do you mean, the tariff?

Mr. MANN. Yes; the relative cost. What is their rate from Chicago by lake?

Mr. ECKHART. The rate on wheat I think they have fixed at  $15\frac{1}{2}$  cents.

Mr. MANN. By lake?

Mr. ECKHART. By lake and rail; and  $17\frac{1}{2}$  cents all rail, to take effect on April 15.

Mr. MANN. What has been the usual cost of transporting wheat by lake from Chicago to Buffalo?

Mr. ECKHART. That has varied from  $1\frac{1}{2}$  cents per bushel to 4 cents.

Mr. MANN. How about flour? That is what I want to get at, the proportionate cost.

Mr. ECKHART. Flour has been a little higher. It has been probably one-half to one and a half cents a hundred higher.

Mr. COOMBS. Does the valuation make any difference?

Mr. ECKHART. No, sir; I think not. There is not much difference between the finished product and the raw material; that is, the material of the class of flour that we usually export.

Mr. MANN. I had a letter from Mr. Purdy the other day on another matter. He was the manager of the steamship company who endeavored to open a steamship line from Chicago to Europe. In that letter he stated to me that it was not an uncommon practice now for ocean vessels to carry wheat as ballast, and carry it over and back, and they were glad to carry it, because if they did not they would have to go to the trouble of putting ballast in their boats. Does that affect the freight rates?

Mr. ECKHART. I presume there have been instances and that there was a time last year when they carried wheat across for a nominal freight rate, equal to about a penny a bushel.

Mr. MANN. Would that have any influence upon this abnormally low freight rate? That is what I want to get at.

Mr. ECKHART. I do not know. That would, of course, affect us in a measure, but that can only happen once in a great while. It is not a general practice at all. Conditions may be abnormal, and in the course of four or five years such a thing as that may transpire.

Mr. COOMBS. Now, is this true that a disadvantage to the miller would be a proportionate advantage to the wheat raiser?

Mr. ECKHART. No; I think not. The ordinary wheat raiser, the farmer, as a rule, likes competition in the purchase of grain, like everybody else. The flour mills are scattered throughout 30 different States of the Union where wheat is raised, and they are bidding against each other for this wheat.

Mr. COOMBS. Apropos of that, he, by getting cheap rates, gets into

the European markets and gets a better market there, because you complain that you have to compete with the millers in Europe.

Mr. ECKHART. Yes. It is also true that the American miller can manufacture all of the surplus wheat of our country into flour and export it to Europe in the shape of flour. In fact, the milling capacity is large enough to grind up all of the wheat that we raise in five months of the year if the mills are all run to their full capacity. The foreign buyers must necessarily have either our flour or our wheat to mix. The wheat that they receive from India is somewhat of an inferior quality and often is very dirty. It requires to be washed before it can be ground into flour. It is not so glutenous as our own wheat. It contains more starchy substance. The wheat that they get from the Argentine is of a similar character, and that from Russia is also much inferior to our own. They must, therefore, of necessity have either our wheat to mix with their wheat in grinding it or our flour to mix with their flour in order to get good results; and the practice has been heretofore, until the transportation companies took it into their heads to carry wheat much cheaper than flour for export, for the foreigner to buy our flour and mix it with their flour in order to give it strength, and as I started to say, they will take our surplus and enable us to grind it into flour here, so that we can afford to pay the transportation companies a reasonable freight rate for transporting it, and also enabling the transportation companies to get the carriage to the mills scattered all over this country—coal, fuel, oil, cooper stock, and bagging and other material necessary for the manufacture of this great volume of flour.

They would also have the carriage of the offal which is carted by the railways from the West to the East and distributed all over the United States. All these things inure, not only to the benefit of the American miller, but the American laborer, American capital, and to the transportation companies. Every dollar's worth of merchandise that we manufacture is of course an advantage to our citizens.

Now, we are perfectly willing that the transportation companies shall have a reasonable rate of freight, and we fully agree with them that there should be some properly constituted tribunal to protect themselves against each other; and we also believe that where the conditions are such that a great industry like ours is affected by reason of the practice of discriminating freight rates there ought to be some impartial supervision exercised over these rates, and some one who has power to enforce its finding, after hearing the facts on both sides, should determine what a just and equal rate between the shipper and carrier shall be.

The CHAIRMAN. Can you give the committee the difference in the selling price of wheat in France—American wheat—as compared with the India wheat? You have spoken of the India wheat as inferior.

Mr. ECKHART. Yes, sir; approximately.

The CHAIRMAN. How much more does our wheat bring in the markets of France, approximately?

Mr. ECKHART. I do not know as to France, but our No. 1 Northern American wheat commands in the United Kingdom usually a price higher by two to three cents a bushel. Of course, it depends upon the condition of the market in Liverpool. That is, the supply and demand of the two varieties of wheat.



The CHAIRMAN. You have spoken of the competition of the French miller with yourselves.

Mr. ECKHART. I simply did that as an illustration as to how France protects its milling industry.

The CHAIRMAN. We had a gentleman here before us the other day upon another subject who made the statement that there was practically no French flour made from American wheat in the London market.

Mr. ECKHART. In the London market?

The CHAIRMAN. Yes.

Mr. ECKHART. Well, I do not know as to that. I am not sure; but I am quite sure that a great deal of their flour goes into Holland, and Holland is one of our markets.

The CHAIRMAN. I want to pursue that matter a little further. What is the difference in value between American wheat and Russian wheat?

Mr. ECKHART. The American wheat commands a higher price than Russian wheat.

The CHAIRMAN. Can you give us the figures on that?

Mr. ECKHART. I should say, approximately, from  $1\frac{1}{2}$  cents to 2 cents a bushel.

The CHAIRMAN. The Argentina and India wheat is lower?

Mr. ECKHART. Yes, sir; they are lower.

The CHAIRMAN. Than the American wheat?

Mr. ECKHART. Yes, sir; they are lower. I do not know what the difference is between India and Argentina wheat. I think the India wheat is perhaps a little better.

The CHAIRMAN. Those are the three countries that are our principal competitors in wheat?

Mr. ECKHART. Yes, sir.

Mr. LOVERING. Do you know if the Canadians import any of our wheat?

Mr. ECKHART. From this country to Canada?

Mr. LOVERING. Yes.

Mr. ECKHART. No, sir.

Mr. LOVERING. None at all?

Mr. ECKHART. No, sir.

Mr. LOVERING. They do not grind it?

Mr. ECKHART. No, sir.

The CHAIRMAN. The hour of adjournment has arrived. You will have the floor to-morrow morning if you would like to continue.

Mr. ECKHART. Thank you.

Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, April 11, 1902, at 10.30 o'clock a. m.

---

FRIDAY, April 11, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. If it is the pleasure of the committee at half past 11 we will go into executive session to take up some matters that are waiting, if we have a quorum here at that time.

Mr. DAISH. I would like to inquire, Mr. Chairman, if the matter regularly set for this morning, continued from Tuesday, would be

likely to take precedence—whether the Mobile matter would care to take precedence—in this matter?

The CHAIRMAN. No; we will take that up later.

Mr. DAISH. Then I will yield the floor for the time being to Mr. Charles England, the Baltimore representative of the National Hay Association, and one of the committee to whom I referred yesterday.

Mr. LOVERING. There is one gentleman here who would like to get away and would like to be heard now. Mr. Mead, of Boston, is here and if there is no objection—

Mr. DAISH. We have no objection whatever to his being heard now.

The CHAIRMAN. How long a time would you desire?

Mr. MEAD. Not more than ten or fifteen minutes.

The CHAIRMAN. Very well; I will call your attention to the time in ten minutes.

Mr. MEAD. I think that will be sufficient.

### STATEMENT OF MR. GEORGE F. MEAD, OF BOSTON.

Mr. MEAD. Mr. Chairman and gentlemen of the committee, upon the bill to amend the interstate-commerce law I appear before you as representing three business bodies—representing city, State, and national organizations. The national organization is the National Commission Merchants' League of the United States. That is composed of constituent bodies from 23 or 24 of the largest cities of the country. At their convention at Philadelphia in January they passed and adopted resolutions asking this committee to grant to the Interstate Commerce Commission such power as might enable them to enforce their findings.

The second body is the Boston Fruit and Produce Exchange, with 350 members, who have also asked, by a petition to their Senators and Representatives here, that requisite power may be given to this Commission that they may be able to enforce their findings against these unjust and exorbitant charges.

The Massachusetts Board of Trade, which is made up of 41 different boards of trade in the State of Massachusetts, also favors this measure, believing that the question is a vital one to all.

The National Commission Merchants' League and the Boston Fruit and Produce Exchange are made up of men who deal largely in food products and perishable products, and there is no class of merchants in the country to whom this matter of rates appeals more, and to no class of merchants in the country is the right decision of the question so vital and all important to the successful prosecution of their business.

The Interstate Commerce Commission stated recently that the freight rate determined to a great extent who shall transact the business, and where it shall be done, and who shall handle the goods. So it is important to this line of business, and we feel that at the present time, without the power to enforce their findings, they can not be of substantial benefit to the business community.

We realize that since 1886 that Commission has been of benefit, and during its first years was of great benefit to the commercial interests, but since the decision was given that they have not the power to enforce their findings we find that the help rendered to the business community is small indeed.

We had a concrete example of that in Massachusetts in 1890, when

the Boston Fruit and Produce Exchange brought a suit before the Interstate Commerce Commission, and the hearings were thorough and the subject was gone into very carefully, and the findings of the Commission were to the effect that "the gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and the fact being so found a reduction is ordered."

There was no question about the high charges and the poor service given to us at that time, but the result was that the railroad paid no attention to it whatever, and, although the decision was in our favor, it was a fruitless victory. That was in 1890. There were three commissioners at that time—Veasy, Morrison, and one other whose name I do not recollect at the present time.

The CHAIRMAN. You say that no attention was paid to that decision?

Mr. MEAD. No, sir; no reduction was made, and they practically ignored the findings of the Commission. Under those circumstances, Mr. Chairman, we find that the business men are loth to prepare a case and bring it before the Interstate Commerce Commission, feeling that whatever the decision may be, even if it is in their favor, no distinct advantage or gain can come to them unless the railroads choose to follow out the findings of the Commission.

The CHAIRMAN. What was the rate complained of?

Mr. MEAD. The rate was excessive and the service poor.

The CHAIRMAN. What was the rate complained of?

Mr. MEAD. The rate was on carloads of peaches coming from the Delaware peninsula to Boston. Do you mean the amount?

The CHAIRMAN. Yes.

Mr. MEAD. That I do not remember.

The CHAIRMAN. Is the rate the same now?

Mr. MEAD. No, sir; the rate has been lowered since.

The CHAIRMAN. It has been lowered?

Mr. MEAD. Yes, sir.

The CHAIRMAN. What was the defective service complained of?

Mr. MEAD. It was delay in taking the fruit from the New England Railroad and bringing it to Boston over the New Haven road instead of giving us New York and New England delivery.

After that the legislature made an investigation as to the New York and New Haven Railroad.

The CHAIRMAN. Has the complaint been removed since?

Mr. MEAD. To a certain extent, but not to the extent of the findings of the Commission. We have in Massachusetts a railroad commission which has simply the power to recommend, but its recommendations are not mandatory, but it so happens that in the State of Massachusetts I think that has always been equivalent to a mandatory order, and that in no case have the findings of the State railroad commissioners been ignored by the railroads; but we do not find that outside of Massachusetts, and recently the State of New York, as I think you know, has been considering that mandatory powers be given their railroad commission. We feel that at the present time the distinctions and the rebates that are given to these larger bodies act as a very unjust and very unfair handicap to the business men at large.

The case that we brought before the Commission was fully heard and the final hearings were here in Washington, and the Pennsylvania Railroad was the line upon which most of that freight originated and

they decline, as the result of that finding, to make any reduction whatever. We feel that Congress, having passed the interstate-commerce act, thereby created this Interstate Commerce Commission, has exercised a limited supervision over the railroads of the country, and we feel that that ought to be carried to its conclusion, that is to get any real practical benefit from it. In other words, the railroads are public-service corporations.

We realize that there are only two ways to control public-service corporations, either by competition or by supervision, and as you gentlemen well know, the matter of competition would not obtain in the railroad circles, that while in competition outside of that, when one or the other company is driven to the wall, that ends it; but not so with the railroads, because under the guise of a receivership they can go on and inflict incalculable injury upon the other lines, and we feel that the Government is the proper power to exercise supervision over these public-service corporations. Of course, you are familiar with the findings and the reports of the Interstate Commerce Commission. Railroad managers have made no attempt to conform their practice to the spirit of the law.

In the report for 1890 it says:

It is universal experience that capital takes advantage of competition, and if public transportation can be bought and sold like a commodity, the largest purchaser will some of the time, if not all of the time, get the best terms; while the smaller dealer, and the man of moderate means, will find that he is being discriminated against, and what is most unfortunate of all, these discriminations favor the few and oppress the many.

We know, Mr. Chairman, that through the rebates given to large corporations, they are enabled to drive out the men of smaller means.

Something is being said just at the present time, and I believe that a Massachusetts man has introduced something along that line, of investigation of the beef trust, so called. Now, they have for years confined their business largely to the beef business, but at the present time they are going outside of that and taking in food commodities of different kinds, butter, cheese, eggs, poultry, so that they propose to get, as it were, a monopoly of the food products. They make their own prices in the West, and I know from a bit of personal experience that I had last year they go into Western cities where a man has built up a trade in the last fifteen years, they go in there and say to that man, "We want your business. We will give you a certain amount of money to work for us, and if that is not agreeable to you we will put a man here and drive you out of business;" so that they control the products there.

The CHAIRMAN. That is a very astonishing statement to make in a free country in regard to free white men. What evidence have you to substantiate that statement?

Mr. MEAD. When I was in the West in January last I went in towns there where they simply stated to me that those men come in there and make that statement to them.

The CHAIRMAN. Will you give us the names, so that we can pursue that investigation?

Mr. MEAD. I can give you names.

The CHAIRMAN. We hear a great many similar charges of a similar character to that. If they are true—and of course I do not mean to intimate that you do not regard them as true—the public ought to

know it, and somebody ought to take the responsibility of making the statement in such a way that we can secure a public knowledge of the facts, and the matter be brought, if nothing else, to the attention of the grand jury.

Mr. MEAD. I realize, Mr. Chairman, that you desire specific—

The CHAIRMAN. Of course I do not want to embarrass you, but if you can do that without any detriment to yourself, if you are willing to take the responsibility of it, we will investigate a matter of that kind. I know there is not a member of this committee who would not insist upon following up a statement of that kind, and on putting the responsibility upon the men who have attempted to use a statute of the Federal Government for such oppressive and tyrannous purposes.

Mr. MEAD. I will endeavor to give you specific cases. I have been through the Western States where that method of getting control of the products is used, and, of course, they will endeavor to cover it up as well as possible; but what I say is this, that they go there and secure control of these products, and then their rebates and their discriminations—their goods being carried in their own refrigerating cars—give them a distinct advantage over an ordinary business man.

In talking with the traffic agent of a railroad a short time ago he said, "We have 450 cars a week from such and such a company, and even if their requests to us are somewhat unreasonable we simply have to acquiesce, because of the amount of business that they do."

The CHAIRMAN. Will you give us the name of that railroad official?

Mr. MEAD. The official I do not know that I ought to name to you. I do not know that I ought to give you the name.

The CHAIRMAN. You see what the difficulty is. There are many men who give attention to the subject who believe that the law is ample for effecting a remedy to every evil that you complain of as it is now; that the law is ample, and that gentlemen like yourself, who have a knowledge of the facts, will not give the information to those whose duty it is to enforce the law. The law can not enforce itself. It must be done through the medium of the courts, and if you gentlemen who know of these infractions, who have the proof in your own hands, refuse to use it, "What better," many people say, "will be the conditions if additions are made to the law?" Somebody has got to execute the law.

Of course, I do not want to embarrass you, if you do not desire to give the names of these persons, but if you will give them I think this committee will see that proper publicity is given.

Mr. MEAD. You see this specific charge that I have mentioned was made in conversation with this traffic manager when we were complaining of existing evils, and in the course of conversation he said, "We have to extend courtesies, and you can readily see how that would be, with this company giving us 450 cars a week, that, figured into a year, is a very large amount of business."

The CHAIRMAN. Did you understand from his use of the word—he used the word "courtesies" or "favors," did you say?

Mr. MEAD. I could not recollect his exact language, but what he sought to convey to me was that a company giving them 450 cars a week could insist that they should give them some accommodations and some favors that would not be accorded to the ordinary shipper.

The CHAIRMAN. Did you understand that they gave their favors or

discriminations in the way of rebates from the charges which they made to other people?

Mr. MEAD. No, sir; we were not discussing then the matter of rebates. It seems to me that has been thoroughly covered by the recent reports of the Interstate Commerce Commission. They reported that discriminations were made in favor of these refrigerator-car companies. We think that the amendment which is before you should give to the Interstate Commerce Commission proper authority, not to fix rates primarily, but after a fair and impartial investigation has been had, and it is shown that unjust conditions exist and that rebates have been given, under those conditions we feel as though some authority should be given to the Commission to enforce their findings.

Of course, that matter can be covered entirely by published tariffs. If they are published and lived up to, the business community is placed upon a level. But, going back to what I was speaking of before, the getting control of the products of the West, they have an opportunity to bring them here in their refrigerator cars, and poultry can be brought in the beef cars. It was stated to me last week in Boston that where they had a large shipment of poultry that it was sold inadvertently to a dealer on the market who went out and bought it, 50 or 100 boxes of poultry, at the market price, and the manager seemed very much wrought up over it, and said that he would rather that it had been sold at half a cent less to a retailer than that it should have been sold to another dealer; which shows that they are seeking to build up a business with the retailers and the hotels.

So that we feel that the business men are being at the present time subjected to unfair conditions, and we hope that relief may be given to us, because if those great corporations who have these rebates can buy their goods in the West and ship them to the East and sell them practically at cost, and make a profit that the local man can not, he will be driven out of business. They simply want you to make the interstate-commerce law so that it will give them the power so that all the business men and dealers of the country will be placed upon a level. We do not feel that it is the case to-day. Whether by the Corliss bill, or whether under a bill that shall be drawn by this committee, we simply ask for that power. The board of trade indorsed specifically the Corliss bill. The other parties to which I have alluded did not. They simply prayed Congress to pass special legislation such as might be necessary to give the Interstate Commerce Commission power to enforce their findings.

Mr. MANN. You say that the refrigerator people, Swift & Co., and Armour & Co., and Hammond & Co., are shipping large quantities of poultry?

Mr. MEAD. Yes, sir; this year they have done so. They have taken on the poultry, egg, and butter business and have put vast quantities into storage in the West. They control, as you know, refrigerator plants all over the West, and also have put large quantities into storage in the West—cold storage.

Mr. MANN. Where do they get the poultry and eggs?

Mr. MEAD. They have gotten them from the West by making contracts with some shippers—shippers who ship the highest grades of poultry; they would endeavor to get them to work for them. They have bought out their business or taken over their business wherever

they could, and induced the man carrying on the business to go to work for them. In other cases, with some of my own shippers, they make a contract with the man who has a business there, agreeing to pay him half a cent a pound advance on all poultry he takes in. They adopt different methods to meet the different conditions at the different cities and towns.

MR. MANN. They pay a little higher price than an ordinary commission man does?

MR. MEAD. Yes, sir.

MR. MANN. And they put these things in cold storage and keep them until the proper time for shipment?

MR. MEAD. Yes, sir; and it is a profitable business. Poultry is higher this year than for many years before, and eggs the same way.

MR. MANN. And when they take it east to Boston and Massachusetts they want to sell it directly to the consumer?

MR. MEAD. Yes, sir; they are seeking to push aside what we call the ordinary commission man, the middleman. We thought that it was a strange statement for a man to make, that he would rather sell his poultry at half a cent less to retailers than for a fair price to a man who would buy 50 or 100 boxes at a time, and that illustrates the conditions.

MR. MANN. They are endeavoring to eliminate the cost of commission?

MR. MEAD. Yes, sir; and as you know, they have houses in all the larger cities throughout the country.

MR. MANN. You think the interstate-commerce law ought to be amended so that the commission men would be protected against them?

MR. MEAD. Yes, sir; that is the pith of what we desire to accomplish. We think that running their refrigerator cars and lines as they do, they have a great advantage.

MR. LOVERING. Who owns those cars?

MR. MEAD. Swift & Co., Armour & Co., Nelson Morris & Co.—

MR. LOVERING. Are the railroads obliged to carry those cars whether they want to or not?

MR. MEAD. Yes, sir; they are. That saves them the cost of equipment, and they pay those car companies three-quarters of a cent mileage, I understand. I have not any definite knowledge as to that.

MR. LOVERING. Do you understand that any man can put on a refrigerator car and compel it to be carried?

MR. MEAD. A great many are to-day, and many of the smaller concerns are doing that. You frequently see in going through these smaller towns packing houses who have their own cars of various kinds. They get a mileage from the railroad. I understand that the Santa Fe Railroad this year is taking steps to provide its own cars and thereby throw out of service the 6,000 cars now running on that road.

MR. LOVERING. Will they throw them out when they get their own service?

MR. MEAD. That is the statement in the papers. Of course, in the California orange trade there are thousands of cars. I understand that lately Swift & Co. bought out the C. F. and D. Company, and that is now merged into Swift & Co., or it may be Armour & Co.

MR. LOVERING. Would not the railroads carry cheaper in those cars than in their own cars?

MR. MEAD. I do not know but what that is true.

Mr. LOVERING. Is it not reasonable to suppose that that would be true?

Mr. MEAD. Yes; they would save the cost of the cars and the maintenance, and that is why they can pay them three-quarters of a cent.

Mr. LOVERING. Is not that a sufficient reason why they make lower terms and rates with those people?

Mr. MEAD. Yes, sir; but at the same time the rate ought to be made the same. They can pay the car company a rate of three-quarters of a cent a mile; but whatever mileage they do pay them, that will save them building the cars and save them some cost; but the open rate should be the same to all shippers.

Mr. MANN. Is it not a fact that the open freight rate, eliminating any special rate, is the same to the shippers in cars owned by themselves as it is to anyone else, and the only difference is that the railroad pays to the owner of the cars the mileage for the use of the cars, and that is all?

Mr. MEAD. Yes, sir.

Mr. MANN. That is the way the operation is carried on?

Mr. MEAD. Yes, sir; although I know in some cases they pay the icing charges direct to the car company. I think in the peach business they pay the freight to the railroad and the icing charges to the car company, but sometimes the railroad collects both charges.

Mr. COOMBS. In reference to the shipment of California fruit, is there that rebate of which you have spoken which pertains to the shipment of poultry and beef in the West?

Mr. MEAD. I am not familiar with that, because we do not handle any California fruit.

Mr. COOMBS. You do not know about that?

Mr. MEAD. No, sir.

Mr. COOMBS. Do you know what cars they are shipping now—who own those cars?

Mr. MEAD. The C. F. and D., Nelson, the Armour Company, and the Swift Company. I think that the Swift Company has recently acquired the C. F. and D. The papers have stated recently that the Santa Fe road was building a number of thousand refrigerator cars, and that another year they would carry the freight in their own cars and do away with the cars belonging to these private individuals and companies.

I think, Mr. Chairman, that covers the ground that I had in mind—the fact that as public-service corporations these railroads should be subjected to supervision, and that will control where competition will not. We would not think in any one of our cities where we had street railways and electric lighting service of letting another company come in except under proper regulations, and it must be shown in a case of that kind that the public convenience requires another company. We do not want poles duplicated, and streets dug up, and things of that kind unless the other company is needed, because otherwise it will be the two competing companies, and one would buy up the other, and the company would have to pay an increased cost on account of the plant taken over and new securities issued, and it seems to me that should be the attitude of Congress toward the railroads.

I thank you very much, gentlemen.



**STATEMENT OF MR. CHARLES ENGLAND.**

Mr. ENGLAND. I am here as a representative, with Mr. Daish, chairman of the committee of the National Hay Association, to advocate the present bill, which you are now considering.

The National Hay Association is distinctively a business men's organization. It is more national in scope, perhaps, than any other organization in this country. Its membership amounts to between 750 and 800, residing in all the principal producing States of the Union.

The production of hay, its value, its importance, is very generally overlooked, and I have only to remind you that the production of hay in the United States in 1900 was about 56,000,000 tons, and the value about \$450,000,000. Those are figures from the Department of Agriculture. It is of more value than the wheat crop, the oat crop, or the rye crop, and is second only to the corn crop. The crop of corn in 1900, which was a phenomenal crop, was about 58,000,000 tons. The same year there were over 50,000,000 tons of hay produced. We have been discriminated against, and the point which I want to make now is that hay has been discriminated against as in favor of other articles, other commodities; that because of the recent classification, known as No. 20, issued by the classification committee of the railroads, which went into effect on January 21, 1900, hay was changed from sixth to fifth class.

It had been in the sixth class, with the exception of a few months for, I think, ten or twelve years. There had been no complaint as to the fairness of that rate. The railroads had been glad to carry it and glad to receive it. But most arbitrarily and, we think, in a most unfair manner, the notice not being sufficient for any man to adapt his business to changed conditions, that rate was changed. The National Hay Association protested, but without effect, and after it had been given six months' trial the association again went before the classification committee and showed this discrimination and its bad effect, and that it was injuring the business, and we were received almost with indifference.

Since that time the matter has been taken before the Interstate Commerce Commission, and the case is now pending before them, but we fear that under the decision of the Supreme Court of the United States they will not be able to effect any remedy for us, although we think we have shown them the fairness of our contention.

Mr. Chairman, the question was raised here yesterday, or the day before, as to whether these rates, these discriminations, affected the farmer. I think I can show you in regard to hay that they do. Out of our crop of hay of 56,000,000 tons the States west of the Mississippi River, including Wisconsin, produced about 26,000,000 tons, very nearly one-half of the hay crop. Wisconsin, Minnesota, Iowa, Missouri, Nebraska, South Dakota; Iowa leading with a crop of about 5,000,000 tons. Those are figures from the Department of Agriculture. They do not refer to wild grasses or pasturage, and to remind you of that, the great State of Texas is only credited with a hay crop of 480,000 tons, while the small State of Maryland is given a crop of 380,000 tons.

The CHAIRMAN. How much of that hay from the State of Iowa goes to markets outside of the lines of the State?

Mr. ENGLAND. We have not those figures. Those would be impossible to obtain, as to exactly the disposition of the crop.

The CHAIRMAN. Take the 26,000,000 tons that are produced west of the Mississippi River, including Wisconsin, as you say—what has gone East or gone to those markets of all of that quantity?

Mr. ENGLAND. I think in the last two years not one ton of that hay has come East. When I say East I mean the Eastern seaboard markets.

That is what I was coming to. Taking this hay from the sixth class and putting it in the fifth class increases the freight on hay from \$1 to \$2.60 a ton, according to the distance of the haul and the location. Prior to that we in Baltimore frequently brought hay from west of the Ohio River. We shipped hay from Ohio and Illinois and Wisconsin, and all the Western States. I have been in the hay business for well on to twenty years, and prior to this time we considered Illinois and eastern Iowa our best sources of supply, but in the last two years I have not handled a carload of hay from Illinois, and very little from Indiana, and our sources of supply are Ohio and southern Indiana.

The CHAIRMAN. Is that the result of the increased railroad rates, or is it the result of the higher price of beef cattle which induces the farmer to put all of his hay into his cattle on his farm?

Mr. ENGLAND. Well, I believe that it is the result of these high rates.

The CHAIRMAN. Is it not true that with cattle at 5 cents and 5½ cents a pound on the farm that hay is worth on the farm from \$16 to \$17 a ton to the farmer.

Mr. ENGLAND. That is a question I could not go into, not knowing anything about that business. But we all know that there has been a great increase in the cattle raising all through the country. At the same time, we know that, taking the prices of hay in the State of Iowa—perhaps not to-day—this has been a peculiar year because of the drought through the South and West, when there has been an increased demand for hay—but had the old rate been maintained we could have brought hay from those States under many conditions. Hay is being exported to-day from our ports to Europe.

There has been a better demand for our hay this year than for many years before. Owing to the war in South Africa the English army has been obliged to carry hay from Liverpool and Belfast and Cardiff to meet the demand, and if we had had the old rates to-day, which, as I say, were \$1 to \$1.50 less than those of to-day, we could have exported much more hay than we have been doing, and in that way the farmer has not been able to market his hay and get a price for it, and we have been cut out of that business.

Mr. MANN. Has not there been a shortage of hay in Illinois and Iowa during the past two years?

Mr. ENGLAND. I do not know about that exactly, except for the crop of 1901, and the crop that Illinois raised in the year before. The figures of the crop of 1901 were 53,000,000 tons, according to the original estimate. The crop preceding that, on which I am basing my statement, was 56,000,000 tons.

Mr. MANN. How was it three or four or five years ago?

Mr. ENGLAND. Why, it has ranged from 45,000,000 tons up to, I think, about 56,000,000 or 57,000,000 tons. That is going back to a time of ten years ago. The crop of Illinois in 1900 was 2,350,000 tons.

Mr. MANN. How has the price been on hay for the last three or four years?

Mr. ENGLAND. With the ordinary market fluctuations from time to time, it has averaged probably a dollar and a half a ton, in the last two years, higher than it was, taking the average of fifteen years before that. The price has been a little better. It has had to be better at the seaboard to meet this advance in rates.

Mr. MANN. Take the Chicago market. That is not affected by these conditions?

Mr. ENGLAND. I have not those figures definitely. I would not like to express merely my opinion, but we have watched the Chicago market from time to time and we have not had any opportunity in the last two years to buy hay there and bring it here. Heretofore we have been able to do it, but lately we have not.

Mr. MANN. This rate that you speak of is from Chicago and points east—

Mr. ENGLAND. Yes, sir; this rate refers to all points in that territory that I have mentioned.

Mr. MANN. I say the Chicago basic points. In what class is hay in the Western classification?

Mr. ENGLAND. I do not know as to that.

Mr. MANN. You say that hay now is in the fifth class in what is known as the official classification; that is, east of the Mississippi River?

Mr. ENGLAND. Yes, sir.

Mr. MANN. How is it in the Southern classification?

Mr. ENGLAND. We do no business in the South. We do not know about that. This refers to the classification north of the Ohio and Potomac rivers.

But, Mr. Chairman, we have stated that discriminated against in favor of other commodities. The question was raised here about the capacity of the cars having some effect on the question. Now, I have brought with me to-day two freight bills, which will probably better illustrate it than any other matter, one for a car of hay and the other a car of oats, shipped from the same point by the same shipper in Michigan to the same party in Baltimore, coming into Baltimore over the Pennsylvania line, one of the carloads delivered to a local elevator, and the hay delivered to the terminal warehouse, the hay warehouse of the railroad, situated within 250 yards of the elevator. This is under classification No. 20, which we complain of. The car of hay was 21,190 pounds. It paid a rate of  $24\frac{1}{2}$  cents, and the freight paid was \$51.92. The car of oats from the same party, shipped to the same point, contained 33,000 pounds, at a rate of  $10\frac{1}{2}$  cents, and the freight paid was \$34.65.

In other words, the railroad company hauled 33,000 pounds of oats from the same point to the same point for about \$17 less than they charged for this very much smaller amount of hay.

Now, I will say that since that time there has been an advance of 3 cents per 100 pounds on grain more than it is on hay. Therefore it does not make my argument quite as strong.

Mr. MANN. What is the date of those bills?

Mr. ENGLAND. Those bills are about two years old.

Mr. MANN. What is the date of them?

Mr. ENGLAND. They were selected because it is but seldom that you

can find two cars shipped from the same parties to the same parties of different commodities.

Mr. MANN. What is the date of the bills?

Mr. ENGLAND. April, 1900.

Mr. MANN. That is after the lake traffic is over?

Mr. ENGLAND. Since that time there has been a change on grain of 3 cents per 100 pounds, making the rate  $13\frac{1}{2}$  cents per 100 pounds, which would make that cost of transportation about \$9 more. The rate on hay remains the same, and to-day this would show up in this way. The present freight rate on grain from Durand to Baltimore is  $13\frac{1}{2}$  cents; the present rate on hay from Durand to Baltimore is  $22\frac{1}{2}$  cents. Upon this basis the cost of transportation of 21,190 pounds of hay at  $24\frac{1}{2}$  cents is \$51.92; the cost of transportation of 33,000 pounds of oats at  $13\frac{1}{2}$  cents is \$44.55. So that even to-day the railroad company would haul 22,000 pounds of hay and charge more for it than they would for half as much again of oats, showing that the capacity of hauling of hay does not enter into—

Mr. RICHARDSON. Is there not something in the question of the commodity to be handled and the facility and ease with which it can be handled?

Mr. ENGLAND. I do not think that at terminal points it takes any longer to load a carload of hay than it does a carload of oats; that is, at the terminal house; they both go to the public warehouse.

Mr. WANGER. How about the matter of space taken in shipping?

Mr. ENGLAND. They take the same space. That is the point that I wish to make.

Mr. RYAN. It is of less weight.

Mr. RICHARDSON. Who is complaining about that?

Mr. ENGLAND. The National Hay Association is complaining that hay has been discriminated against.

Mr. RICHARDSON. Why?

Mr. ENGLAND. By this unjust classification. Hay has been put in the fifth class from the sixth class, whereas it used to be uniformly in the sixth class, and that has prevented business to that extent.

The CHAIRMAN. What is the reason given by the carriers?

Mr. ENGLAND. They have never given us any real reasons.

The CHAIRMAN. Did they make no argument at all because of this seeming unjust discrimination?

Mr. ENGLAND. I have not heard of any, sir. I have not heard of any arguments they have made. They heard our arguments and simply ignored them.

Thereupon, at 11.45 a. m., the committee adjourned until to-morrow, Saturday, April 12, 1902, at 10.30 o'clock a. m.

---

SATURDAY, *April 12, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

#### STATEMENT OF MR. E. P. BACON—Continued.

Mr. BACON. Mr. Chairman, I would like to present in connection with the subject that was discussed the other day, in regard to the powers of the Commission, a statement which appears in the Interstate

Commerce Commission's report for 1897, the eleventh annual report, which is as follows:

But it (the Commission) further understood that when, as in this case, the rates had been established by the carriers and afterwards challenged or complained of as unreasonable and the question of unreasonableness had been tried, the Commission could declare not only what rate was wrong, but what would be right. That is to say, when a rate had been established by the carriers, challenged by or on behalf of the shippers, and tried by the Commission in a proceeding ordered and regulated as near as it may be in conformity with United States court proceedings, the Commission had a right, and it became its duty, when justified by the facts, to declare the rate wrong, decide what rate would be right, and through the judgment of the court compel the carrier to perform its legal duty to receive and carry property at rates which are reasonable and just.

The Commission exercised this power in a case commenced in the second month after its organization and continued to exercise it for a period of more than ten years, during which time no member of the Commission ever officially questioned the existence of such authority or failed to join in its exercise. As already stated, the authority of the Commission to modify and reduce an established rate and to enforce a reasonable rate for the future was not questioned in the answer of the defendant in the Atlanta rate case, decided March 30, 1896, nor had it ever been denied in any of the answers made to more than four hundred cases previously commenced, many of them alleging unreasonable and unjust charges and praying the Commission to enforce a reduction and lower rates in the future.

I wish to state that the power which has been exercised by the Commission during the ten years referred to in these extracts, and the existence of which was denied by the Supreme Court, was not denied on account of any question as to the constitutional right of Congress to confer that power, but simply on account of the point that the act itself did not express it specifically. And I wish to say further that during that period while that power was exercised no complaint was ever made by any of the carriers of a rate that had been substituted or ordered by the Commission as being unjust or as inflicting any hardship upon the carriers. But the validity of the order was questioned only on the point as to whether the Commission actually possessed the power to make such an order.

One question that was asked the other day I would like to say a few words in relation to, and that is as to the rightfulness or the legality of requiring the Commission to take all of the testimony in case of an appeal, to take any additional testimony which might be desired to be offered by either of the parties to the case. It seems to me that the apparent difficulties which exist in relation to the rightfulness of this arise from the fact that the Commission has been regarded as a judicial body: That is not the case. It acts as an agent of Congress in exercising legislative functions of making a rate, of prescribing a rate, after finding that the existing rate is unjust or discriminating, and that as an administrative or legislative act it should and must necessarily, and ought in fact, to go into immediate effect as any legislative act does; and parties who question its rightfulness have their remedy in an appeal to the courts for a review of the question as is provided in the Corliss bill. My idea is simply this, that an act of the Commission, not being a judicial act, there is no reason why it should not go into immediate effect, being a legislative or administrative act instead of a judicial one.

The CHAIRMAN. You regard the fixing of a rate as a legislative act?

Mr. BACON. As legislative, yes, sir; and as all legislative acts must necessarily go into immediate effect, and then parties who object to the effect of that act have their remedy in the courts, and while it is being tested in the court it is in operation and effect, and any loss

which may be sustained by it by anybody is one of those contingent results which can not be provided for. But in point of fact, during the ten years when this authority was exercised, no railroad company ever claimed that it experienced any hardship or suffered any wrong in consequence of the acts of the Commission. Experience is far better than theory.

The CHAIRMAN. Have we had any experience in procedure such as is now proposed during the ten years you speak of?

Mr. BACON. Yes; we have had continuous experience on that direct line. Numerous cases have been decided by the Commission in which a rate has been fixed.

The CHAIRMAN. Yes; but when they fixed a rate they did not attempt to enforce that rate. If it was to be enforced, if it needed any further power, they had to go to the court.

Mr. BACON. They had to go to the court.

The CHAIRMAN. The court then rendered its judgment.

Mr. BACON. They had to go to the court if the railroad did not obey the order.

The CHAIRMAN. If they did not obey it.

Mr. BACON. So that during the ten years of that time, or most of that time, eight or nine years, the railroads almost universally complied with the rates of the Commission and the rates it prescribed were promptly observed, it being regarded by the railroads at that time as a proper function of the Commission and the orders were obeyed and the rates put into effect which the Commission prescribed; and as I say, no one ever claimed them as being wrong and no railroad ever suffered from that practice on the part of the Commission, and that practice, I say, is far better than any theory. We may theorize as to what possible results may be and yet when we have had ten years of experience it is worth far more to us than any theorizing of what may occur to us in the future, and having had that experience—and it having resulted satisfactorily, not only to the public but to the carriers themselves—that is the best warrant in the world for reinvesting the Commission with that particular power.

The question was asked the other day if bonds should be given between those two parties, the complainants on the one hand and the railroads on the other; but that is utterly impracticable from the nature of the case. The party who pays the freight is very rarely the one who bears it ultimately. He is the middleman. The great bulk of transportation of the country is carried on by middlemen, and freight paid by them is immediately added to the cost of the goods, and follows the goods, and is paid by the consumer in case of merchandise, and in case of agricultural products the freight to be paid is deducted from the value of the product at the point of production, and is borne in advance by the producer.

Consequently there are no parties who can give bond during the pendency of the case who are the real sufferers, and the man who has paid the freight is not a sufferer at all, although the rate may be excessive and exorbitant and unjust in other respects; yet he has paid it, and has recouped himself by charging it on the goods, and he has actually recovered it in that way, and there is no remaining direct or personal interest in it whatever. Hence, the impracticability of providing bonds as has been suggested, and hence the necessity of providing an entirely different method of treatment for cases relating to the

freight to that relating to claims between individuals. It is absolutely essential that they should be treated in an entirely different manner, because of the difference in the nature of the case. This treatment can only be provided by carrying into effect the rate prescribed by the Commission, when, upon full investigation, the rate is found to be unjust or unreasonable.

Upon the question of the constitutionality of some of the provisions of the bill I would like to file a pamphlet entitled "Power of Congress over Interstate Commerce," which cites numerous cases which have been decided by the Supreme Court in relation to the governmental supervision over rates of freight and passage. It is an able legal document.

I will give way here to Mr. Jones, the chairman of the National Grange.

APRIL 4, 1902.

#### NATIONAL AND STATE ORGANIZATIONS.

Grain Dealers' National Association, Indiana State Board of Commerce, Illinois Manufacturers' Association, Kansas Millers' Association, Michigan State Millers' Association, Millers' National Association, Millers' National Federation, Minnesota Retail Grocers and General Merchants' Association, Missouri, Kansas and Oklahoma Lumber Association, National Board of Trade, National Dining Table Association, National Wholesale Druggists' Association, National Live Stock Association, National League of Commission Merchants, National Retail Grocers' Association, National Hay Association, National Wholesale Lumber Dealers' Association, Nebraska Retail Grocers and General Merchants' Association, New England Shoe and Leather Association.

New England Granite Manufacturers' Association, Ohio Grain Dealers' Association, Ohio State Association Patrons of Industry, Oklahoma Millers' Association, Texas Cattle Raisers' Association, Texas Millers' Association, Utah Live Stock Association, Winter Wheat Millers' League, Wisconsin Cheese Makers' Association, Wisconsin Retail Hardware Dealers' Association, Wisconsin Retail Lumber Dealers' Association.

#### LOCAL ORGANIZATIONS.

*California.*—Claremont Citrus Union; Colton, San Bernardino County Fruit Exchange; Los Angeles Chamber of Commerce; Los Angeles, Southern California Fruit Exchange; North Pomona, Indian Hill Citrus Union; Pomona Fruit Growers' Exchange; Pomona, San Antonio Fruit Exchange; Porterville Board of Trade; Porterville, Tulare County Citrus Fruit Exchange; San Diego Chamber of Commerce; Santa Barbara Lemon Growers' Exchange; Santa Barbara, Santa Barbara County Chamber of Commerce.

*Colorado.*—Colorado Springs Chamber of Commerce.

*Illinois.*—Chicago Board of Trade.

*Indiana.*—Indianapolis Board of Trade, Indianapolis Commercial Club.

*Iowa.*—Davenport Business Men's Association.

- Kansas*.—Topeka Commercial Club.  
*Louisiana*.—New Orleans Board of Trade.  
*Maryland*.—Baltimore Lumber Exchange.  
*Massachusetts*.—Brockton Board of Trade, Fitchburg Merchants' Association, Worcester Board of Trade.  
*Michigan*.—Detroit Merchants and Manufacturers' Exchange.  
*Minnesota*.—Duluth Produce and Fruit Exchange.  
*Mississippi*.—Westpoint, Aberdeen Group Commercial Association.  
*Missouri*.—Kansas City Board of Trade, St. Louis Builders' Exchange.  
*Nebraska*.—Lincoln, Retail Grocers' Association; South Omaha Live-stock Exchange.  
*New York*.—Brooklyn, United Retail Grocers' Association; Buffalo Lumber Exchange; Buffalo Merchants' Exchange; Middletown, Business Men's Association; New York Lumber Trade Association; New York Manufacturers' Association; New York Merchants' Association; New York Produce Exchange; New York Stationers' Board of Trade.  
*North Carolina*.—Wilmington Chamber of Commerce.  
*Ohio*.—Cincinnati Chamber of Commerce, Toledo Produce Exchange; Newark Board of Trade.  
*Oregon*.—Portland Chamber of Commerce.  
*Pennsylvania*.—Pittsburg Chamber of Commerce.  
*Washington*.—Spokane Chamber of Commerce.  
*Wisconsin*.—Milwaukee Chamber of Commerce; Milwaukee Merchants' and Manufacturers' Association; Milwaukee Association of Master Steam and Hot Water Heating Engineers.  
*Wyoming*.—Muscoda Dairy Board.

#### STATEMENT OF MR. AARON JONES, GRAND MASTER OF THE NATIONAL GRANGE, PATRONS OF HUSBANDRY.

MR. JONES. Mr. Chairman, I will not detain your committee with any extended remarks upon these questions. Representing the agricultural interests of the United States as presented by our order, we are very much concerned to have an equitable law upon transportation. It is a question that more vitally affects the producing classes than any other classes in our country, as the statistics show that 60 per cent of the freights carried upon our vast railway systems are paid upon the products of agriculture. Hence, an unjust or unfair or inequitable freight rate is very detrimental to us. As has been remarked by Mr. Bacon the cost of the freight is immaterial to the freighter, because he takes it out in the purchase of his product and the cost falls upon the farmers.

I want to say that the farmers are not antagonistic to the railway interests. They do not desire legislation that will cripple or hinder the progress of the railroad development of this country; neither do they want to prevent them from making a reasonable and fair profit for the money and the energies engaged in transportation. But upon the lands in which these railways acquire their rights to build their roads over our property, where a difference arises between the owner of lands and the company seeking a right of way, where those differences exist, all the States have provided that a disinterested tribunal, not interested in the lands or in the company, shall sit and determine what are the damages to the individual for dispossession of this prop-



erty, and that we esteem to be right and proper. It is in the interest of the progress of our nation.

Now, after a railroad has acquired its right to build its road, if there should any contention arise as to the equity of transportation of any of the products which grow upon this or any other farm in that community, certainly it would be but just and fair that where that contention arises some commission should be able to examine this contention and determine, as in the one case, also in the second case, what would be right and fair, and then we would be placed upon an equality.

The management of railroads has been in the past, in some respects, regardless of the interests of the producer or the interests of the farmer.

In the classification of freight they have made it prohibitory to market some products, so that they are absolutely worthless, because the producers are unable to pay the freight charges upon them. These charges are not in proportion to the cost of carriage, as we understand it. In cases of that kind it seems to me that the farmers ought to have a remedy, and that remedy ought to be provided by the National Congress. For many, many years our organization, in its subordinate granges scattered through 41 States of this Union, have met in our State assemblages, our national assemblages, and have continually presented this claim and pressed it upon Congress to give us a remedy.

We have carefully examined the Nelson-Corliss bill, and we believe its amendments to the original interstate-commerce act are just, fair, and equitable, and that they will provide the remedy that we have sought. That remedy is that when the Commission has examined a case clearly and fully, and determined, whatever their finding may be, the railroad companies must obey that finding, and thereafter carry the product at the rate of the finding of the Commission until it has been reviewed and set aside by the courts.

There is not any other protection that the farming interests of this country can secure. We are handicapped. The value of our lands all depends upon the management of the railroad corporations. The rapid combination and consolidation of these roads under a single management makes it more imperative at this time, and more and more forcibly is the necessity felt that we should have legislation, such as we ask now, than in any other period in our country's history, because we are absolutely at the mercy of the transportation interests of the country.

I believe that the loyalty of the farming population to our country is unquestioned. They are willing to pay their proportion of the country's expenses, and they are also willing to stand for its defense, and this is the only remedy we have for our protection. As isolated individual farmers they are unable to make any contention or go into the courts to seek a remedy. They are unable to pay for it. They are absolutely shut out.

It would seem to me that the Congress ought to provide this remedy for us and protect its weakest citizen as well as its strongest corporation. I believe the safety, I believe the liberty, and I believe the loyalty of all the people of this country depend upon laws which shall fall justly upon all its respective classes. If the farmers of this country become thoroughly impressed with the idea that the Congress that they have elected does not take cognizance of their necessities, and

will not protect their rights, you will find that they will become a very dissatisfied class, which they should not be. Naturally, they stand by the Government and stand by its laws, and they wish that Congress would pass a law that will compel every other class of citizens to abide by them.

This consolidation of transportation interests that is taking place absolutely prohibits, or absolutely takes away, all the possibilities of freight rates being regulated by competition. If competition is left free to act and let money be invested in building roads, and then roads act independently of each other and competition rules and regulates the prices, we have nothing to say. But such is not the fact. In view of the action of the railroad companies themselves, in placing under a single management over half of the railroads of this country, it seems to us that we have got to look for the remedy to Congress.

As to the bill that is now before your committee under consideration, we believe that this bill, if reported, by the authority and force that will be given to it by this committee, will probably become the law of this country, and it will do no injustice to any railroad or transportation interests of the country. It will mete out justice to the farming population. Sixty per cent of the freights of these roads are the freights of the American farmer, and according to published statistics—and you are familiar with them—a large proportion of our export trade—between 60 and 70 per cent—is also the product of these same farmers.

We know that evidence to substantiate our claim has been submitted in detail, or will be, by the Interstate Commerce Commission, which has been taking evidence regarding the wonderful discriminations that the railroad companies have seen proper to practice between different localities and different shippers. Now, this affects injuriously, very injuriously, the value of farms along the roads. Last winter I had occasion to look up the matter, and I found that wheat was being carried right through my town for 4 cents a bushel less than we could ship it for from my town, or from Chicago to New York. That was very injurious and very detrimental to every bushel of wheat that was in my granary. It lowered the value by three or four cents a bushel of every bushel of wheat I had and absolutely prohibited me from shipping it; and I only speak of myself because it is a common case with all the farmers of our country.

These matters are important to us, and while the farmers are not able to complain in the same way that others may, they have not the money to come before your committee in large numbers individually, because they are not a moneyed class of men, they are depending on the wisdom, the justice, the fairness of the men they have sent to Congress to see that their interests shall be protected.

In 1887 this interstate-commerce bill was passed, as I understand it, in the first place. It acted very smoothly, very satisfactorily, and the saving of freights at the rates that dominated in 1887, if those freights had been continued through the entire ten years in which this law was in practical operation—the difference in the saving that would have been procured would have amounted to \$529,000,000. Of that \$529,000,000, 60 per cent was saved to the farming population.

Now, I want to say, as a farmer, that grain growing has ceased to be profitable from the fact of the excessive freights that are charged to us. I operate something of a farm, but I have absolutely quit grow-

ing grain, because I can not afford to pay the freights. And so it is with all the grain-raising farmers of Indiana. We are going out of it as fast as we can change our methods of farming. Now, we do not think that it is right that the Congress of the United States should allow any class of people to so conduct their business as to drive us out of our business.

Mr. DAVIS. How do the freight rates now on grain compare with the freight rates in 1887?

Mr. JONES. They are 25 per cent higher, and that is a very serious embargo.

Mr. COOMBS. Is that confined to the railroads, or does it take in the ocean carriers?

Mr. JONES. That goes to the seaboard. I understand there are rates fixed for the export trade which make it very much cheaper. That is the reason why I speak of this particular instance. Contracts, I am informed, were made about a year ago three to four cents cheaper because it was export grain. And then I understand that some of this export grain is taken off in New York and sold in the market there instead of being taken abroad.

Mr. COOMBS. Then when you say that wheat went through your town at three to four cents cheaper that difference was in the way of a rebate.

Mr. JONES. That was in the way of rebate; yes, sir. Now, this law provides that these rebates shall cease, and they ought to cease. There is no justice, there is no fairness, in one shipper having a different rate from another shipper. Every solitary man who handles a commodity ought to have the use of these public highways on fair and equitable terms. Nothing else will give to the seller a fair opportunity of selling his products or to the buyer of buying them.

This bill provides for this also, and that is a very important matter, and I believe to-day that the American farmer feels the necessity of this kind of legislation, and protection from these abuses, more than he does the necessity of any other legislation that can possibly be passed by the American Congress.

I know that there are a great many questions affecting other matters that seem to dominate now in the minds of the American people, but I want to say to the American Congress that if you will look at the condition of the farming classes of this country you will find that they need your guardian care just as well as any other people on God's green earth. There is no question about that in my mind, because the products of these men who are engaged in grain growing are so handicapped that they are unable to provide their children with the necessary amount of education so as to give them an equal show in the race of life. This is a condition that has been brought about by the unfairness, it seems to me, in the management of affairs, by combinations and trusts which have come into force with such power as to fix the rates, or practically so, both of the product of the farmer and that which he consumes, and he stands between the two stones which are crushing out the very life of his business, he needs protection.

I believe, on that basis, that the strongest law that could be passed against combinations and trusts would be one to the effect that every product, when it is shipped into the market, shall bear its just proportion of the freight, and no rebates should be allowed. I believe that if this law was enacted and was enforced it would regulate to-day

every trust there is in America, without any other legislation upon that point, because if they did not get these advantages which they receive from the transportation interests they would be unable to be of any serious danger or damage to this country.

Now, the farmers are in danger, and I want, in my position as the master of the national grange, as chairman of the legislative committee of the national grange, having communication with our 500,000 members weekly or monthly, as the case may be, to say that I believe I know the sentiment of the farmers upon this proposition, and it is unanimous. I care not what political party they may affiliate with, or what party they may sustain, upon this proposition they are united. They are looking to you, and as this pending bill is now before you for your consideration, I want favorable action on your part, and an urgent and persistent effort to carry it through both Houses of Congress would to-day be hailed by the farmers as the greatest act of deliverance to them, of them, that could possibly be had at your hands.

It would not be expected of me that I should go into the legal phases of this bill, which you are able, fully competent, to take charge of. The propositions that we want embodied into law are those that would bring about justice between the business interests of the country.

I was in the committee room yesterday when a gentleman from Baltimore was speaking upon the hay problem, and speaking upon the wheat problem. Now, the discrimination of the different classifications of freights, taking a certain product out of one class and putting it into another, and raising the price, has been prohibitory of trade—in some ways absolutely prohibitory, and that should not exist, should not be permitted to continue.

As to the difference between the freight on flour and that on wheat, I want to say that it would be to the best interests of the American farmer to have American wheat floured by American mills. We think it is to our interests to have it so floured, because then we have a continuous market. We do not ask any advantage for the American miller; we do not ask that his flour be shipped for one farthing per 100 pounds less than the wheat is shipped over these railroads for. That will place both these great interests in competition with each other, the shipper and the miller, and I say for the farming population it is to our interests to have all of our grain floured here, because it gives us a more regular market than the other would, and for the further reason, and the more important reason, that the by-products of the mill are absolutely needed by the farmers in America for fattening their stock, so as to keep the fertilization on our lands.

I want to say that the practice of the American farmer in shipping away his products to a foreign country and having them there milled and the by-products there used by the European farmer has been depleting the fertility of the American farms more than those who have not given attention to these matters would think, and it is an important matter—a very important matter.

This is an agricultural country, and an agricultural country, in order to maintain its position, has necessarily got to keep up the highest standard of the fertility of its soil, and that never can be done when you ship the raw material to some foreign country and let the foreign lands be enriched with our by-products.

So that all this would be changed to the largest degree by an equitable and fair rate of transportation.

I am no particular friend of the members of the Interstate Commerce Commission. I only believe that they are able, wise, and discreet men. Their long experience in the examination of railroads and freights gives them an opportunity to know what is right and what is fair. I believe that to fill a position upon that Commission requires the highest standard of honesty and intelligence. Now, I know that if they should be wrong, either in judgment or honesty, they have got a tremendous power, and in exercising that power they could do immense wrong to the shipper and immense wrong to the producer, as well as serious damage to the railroads of this country, but I believe that we have got to trust these matters somewhere, and I believe that these men are more liable to reach a fair and just conclusion than men who are engaged alone on the side of and in the interests of transportation.

As a farmer I have a few thousand bushels now in my granary that I wish to sell. If the matter was left entirely to me, and I should fix the freight rate for the shipment of that grain, you can very well believe that an Indiana farmer would not put that rate too high; in nine cases out of ten he would put it too low; because of the very selfishness and grasping disposition to get all that he could he would probably put it too low. Now, it would be unfair and unjust to place the vast sums of money invested in the building and management of railroads at the dictation of myself as a shipper, and to make the railroads accept the rates that I might see proper to offer them. That is unfair, and it would be unjust, and it would destroy the value of their property.

Turn the case over and let a railroad man, who has not a dollar's worth of interest in my farm or the farm of any other man who is a shipper—let him fix the rate. I do not believe, although I have a high respect for those men who build and manage the railroads and fix the rates, that they are more likely to fix a fair rate than I would be in their place. They would act and do act just as I would. I believe that they are as apt to fix a little too high a rate as I would be to fix too low a rate. Therefore we would lock horns with each other. Now, we ought to have some fellow who is not a shipper; some good, broad-minded, honest man, with a full knowledge of the case, and with a proper regard to the rights of citizenship in this Republic, who ought to have the case turned over to him and let him hear the evidence, let him decide what is right and fair and just between us.

I want to say to you, my friends, that the future destinies and the future prosperity of this country rest upon Congress seeing that justice is done along the line of these rate questions; and this question underlies to-day the destiny of more of the important industries of the nation than any other question that has occupied the attention of the American Congress for this year or any other year.

All I have to say is this, in conclusion: I am not going to argue the merits of this case. You can get the facts; they are before you on every hand. The Interstate Commerce Commission's books and reports, and their findings and investigations, have all developed the practices of the roads as they are conducted now. The fact that the roads have increased their tariffs about 25 per cent—all this is before you.

What we ask, gentlemen, and what we hope and what we believe

that you, as honest men representing your constituents—not the farmers who live in your districts, but every business man, every consumer, in your district interested in having fairness meted out to them—the poor citizen who buys his groceries is interested in a fair rate as well as the greatest shippers—what we believe that you will do is to fix proper legislation and establish it so that to a large degree transportation rates will be permanent and stable. Then you will encourage men to go out and endeavor to make their farms more productive, and grow still more of the products of the soil for the benefit of the American people, and to relieve the starving people abroad.

You can give great encouragement all along the line. I want to say that the man who owns his farm here near the seaboard, near where he can get to tide water to ship abroad, is entitled to his relative advantage in position. We of the Central West, we in Indiana—and I am sure my good brother here from Wisconsin will back me in this statement—do not want to take away from these men of Pennsylvania and these men of New York their advantages of location. All we ask is equity and fairness. We do not want the broad and rich and fertile plains of the Dakotas to take away the advantages in position of the farmer who lives in the Central West.

We are all entitled to our respective positions. We have bought our lands, and we have paid for them, and we have paid our taxes, and we have stood by this grand Republic in its wonderful progress and in its success all the way through, and now we want the Congress of the United States, the men of the Congress, and this committee, which is charged with the great responsibility of passing upon this most important measure, to stand by us and help to see that fairness, justice, and equity is measured out to all these large corporations, as well as to the citizens of this Republic.

I was going to conclude, but I will say one word more. For years the national grange has petitioned, has urged, and has asked this legislation. Last year I was here in the interest of the Cullom bill. That bill was a little more drastic than this is, but this bill covers the same ground, although not quite so forcibly. Year after year we have been asking this legislation. Now we insist, and we hope, and we are confident that you are going to give us this relief in the present Congress.

#### STATEMENT OF MR. F. H. MAGDEBURG.

MR. MAGDEBURG. Mr. chairman, I represent here to-day the Millers' National Association of the United States, the Chamber of Commerce of Milwaukee, Wis., and the Merchants and Manufacturers' Association of Milwaukee, Wis.

The Millers' National Association of the United States is an organization which comprises a membership scattered throughout twenty States in this Union and having an aggregate daily output of about 100,000 barrels of flour, the Chamber of Commerce of Milwaukee comprises a membership of over 620 of the most prominent business men of Milwaukee, and the Merchants and Manufacturers' Association is an organization of about the same number, engaged mostly in mercantile and manufacturing lines and general trade.

The bill which is before you (H. R. 8337) is one the purpose of which is to amend the act to regulate commerce, which was passed in

1887, after very deliberate action, by the Congress of the United States, its passage being brought about by the then chaotic conditions of transportation rates existing during the years from 1880 to 1887. It then became evident that it was necessary to pass an act regulating interstate commerce and regulating the carrying corporations of the country. The discriminations then existing were ruinous to almost all lines of industry.

This act was not the result of a hasty conclusion, but Congress, through committees, informed itself of the necessity of such legislation. Hearings were had throughout the country and information gathered, and the outcome of all that information was the interstate-commerce act passed in 1887. It was the judgment of the gentlemen who passed that act that it covered the ground fairly and squarely, without injury to the railroads or to the carrying corporations of the country, and without injury to any of the shippers of the different localities interested.

The underlying principle of the act was, as I understand it, equality in the use of the transportation facilities of the country; no discrimination as against persons or places in any of the commercial commodities.

The act, as I understand it, has been fairly administered; the Commissioners who were appointed under its provisions were men of eminently fair disposition and fair reputation. There is not a single exception to be made, as far as I am informed on the subject. They were all able, capable men, selected irrespective of political affiliation.

The railways, or the carrying corporations of the country, submitted with grace to all the decisions made by that Commission for quite a period of years. While there were violations and discriminations going on, possibly, they were of an inconsequential nature, and were promptly adjusted upon complaint and the ruling of the Commission thereon, so that the act was fairly operative until 1897, when a decision of the Supreme Court of the United States put an end to the authority of the Commission's rulings and the placing of those rulings in force.

The proposition is a plain one, that if the Commission has not the power to enforce its rulings, it has practically no value.

No shipper, no receiver, no man in trade, and none with whom I am connected, seeks an unduly low rate. All we desire is an equitably adjusted rate for all concerned, and that rate to be paid without discrimination by all who ship the same commodity. No discrimination to be practiced as against localities. We have on several occasions come in vain to Congress for relief. Last year we commended to your consideration the Cullom bill, which, though it was reported, was never acted upon.

We now come to you again with this bill seeking relief, asking you to make the interstate-commerce act as operative as it was supposed to have been at its creation, and to endow the Commission with that power which the Supreme Court holds it does not possess under the present act. We think the enforcement of a ruling of the Commission after a hearing, its immediate enforcement until revoked by a court, will give us the relief sought for. The other matter, relating to the manner of how this is all to be done, is a question for lawyers, which I will not touch upon. But I find that the milling industry of this country has been seriously injured by the discriminations which have been

practiced between the raw material—wheat—and flour, the product of that material.

The result is self-evident, because the discriminative rates have built up the milling industry of Europe at the expense of the milling industry of this country.

An extract from a paper, which I have here, published in Dubuque, Iowa, refers to the matter briefly, and I will, with the permission of the chairman, file this with the committee as a part of my remarks.

The article referred to is as follows:

#### A MENACE TO THE MILLING INDUSTRY.

A writer in a recent issue of the Saturday Evening Post calls attention to the potent influence which the railroads of this country exercise over its industries. According to the Government reports, the exports of wheat in June of this year were in round numbers 13,000,000 bushels, which was 50 per cent more than for the same month last year. In July there were 18,000,000 bushels exported, nearly three times as much as in July, 1900. For the seven months ending with July the amount of wheat exported was over 95,000,000 bushels, or 45,000,000 bushels greater than in the first seven months of 1900. The first thought is likely to be that this is an excellent showing for this country, yet the contrary is the case. In fact, it is the poorest showing the country has ever made in the way of exports, for these enormous foreign shipments point to a commercial calamity which is sure to overtake a great industry—that of flour milling—unless it is averted by prompt action on the part of those who have it in their power.

The situation is so simple that anyone may see it. The milling capacity of this country has increased so rapidly in the last ten years that a foreign outlet for a part of the flour is an absolute necessity to keep the mills running. In fact the capacity of many of the mills has been increased by reason of the export business they have built up.

The Minneapolis mills exported for the crop years ending with August, 1899 and 1900, nearly one-third of their output, or about 5,000,000 barrels each year. However, for two years the export trade has steadily fallen away; first in loss of profit, though the volume of shipments was maintained. The mills kept their brands in the foreign market, although it was impossible to sell at a profit owing to the low prices made by the European millers. This year American millers have been unable to sell their flour in Europe except at a loss most of the time, and as a result the volume of flour exports has fallen off heavily.

The cause of this falling off of the flour export business is discrimination in freight rates whereby wheat, the raw material, may be shipped from the West to Europe at a lower rate of freight than flour, the manufactured product. The millers of Great Britain and of the Continent are thereby enabled to secure American wheat and to make flour which can be sold cheaper in London, say, than American-made flour can be sold. This discrimination in freight favoring wheat as against flour means, unless relief be given to the miller, practically the ruin of the great industry, and a return—a retrograde step—of this country from being a shipper of a manufactured article to becoming an exporter of raw material.

In August the published tariff on wheat and flour, all rail from Minneapolis to New York, was 22½ cents per hundredweight, but the actual rate obtainable on wheat was 16 cents. No reduction in rates was obtainable on flour. Adding to this heavy discrimination against flour the fact that the steamship companies made a rate of 1 cent a bushel on wheat from Boston and Philadelphia to London and Liverpool, but that flour paid from three to five times that rate, under the circumstances it is not surprising that the export flour trade has been paralyzed.

That the reader may fully comprehend the magnitude of the industrial tragedy that is in sight, the importance of the flour-milling industry must be understood. In round numbers the capital invested in milling plants is \$250,000,000, which is only exceeded by iron, steel, and foundry works, and cotton-goods factories.

Take away from these mills their export trade, and they must find an additional domestic market for their surplus or close down. The Minneapolis milling companies would be forced to sell 5,000,000 barrels of flour in American markets more than they have been doing or close their mills one-third of the time. The latter is impossible. Owing to their wealth and strength, they might be able to sell their entire output in the domestic market, but this means that much less flour sold by other mills. At the same time, there would also be other exporting mills endeavoring to



dispose of their surplus output in an already overstocked market. The final result would be the wiping out of all but a few small mills with a local trade, and a giant corporation or two that would control the trade of the cities.

The trouble may be traced to the big elevator companies of the West and Northwest. To illustrate—and this can not be successfully denied—an elevator manager at Kansas City, Omaha, Minneapolis, or Chicago has an accumulation of wheat which he wishes to get out of the country. He goes to the several traffic managers, saying, "I have a million bushels of wheat to move, and the road making the best rate gets the business." The traffic managers want the business, and one of them gets it.

Here is where this policy is shortsighted. A road may several times a year get a few million bushels of wheat to haul, and it can run solid trains to move it. Then the movement stops for a time and part of the road's equipment is idle, whereas it has been crowded and other traffic has been inconvenienced for a time. The elevator man has little further use for the road until he can get another cut rate. With the miller it is different. Every town of any size has a mill, in which a number of men are employed. Shipments of flour continue evenly and uninterruptedly throughout the year. Coal, cooperage stock, bags, and machinery are shipped in, and, in the aggregate, form an immense amount of business.

As wheat exporting countries Russia and Argentina are almost as important as the United States. As milling and manufacturing nations they are insignificant. Their grain goes from the producer to the exporter at a fraction of its worth, and the peasantry of those countries are as far below the American farmer as the handmills of our ancestors were below the roller mills of to-day. Yet let the manufacturer and all that comes with him step in between the peasants of those countries and the grain exporters, and the importance of those nations will steadily increase. Remove the manufacturer of flour in this country, and the other industries that go with him, from the place he occupies between the farmer and the exporter of wheat, giving the farmer over into the hands of the few large elevator companies and a milling corporation or two, and the great agricultural manufacturing States will crumble back to pastoral primitiveness, and the great flour milling industry and the hum of wheels in thousands of villages and towns will be a thing of the past.

The mills of this country, as must be known by you, have largely been engaged for some years in export trade, and all of them have increased their milling capacity as their export trade increased. Since the discrimination practiced between wheat and flour it has become apparent that the milling capacity is beyond our domestic wants, and the result of crowding all the capacity of our mills for the production of flour for consumption in this country alone has been ruinous to the trade. About four weeks ago an arrangement was arrived at with the railroads by which they gave us what they called an export rate on flour, which was based upon the export rate in force upon wheat.

We all felt that there was now a chance to do something, but that rate was hardly in existence before it was recalled and the old conditions that existed prior to the 17th of March again prevailed, wheat being exported at a lower tariff rate than flour.

MR. FLETCHER. Will you please tell us about what is the relative difference between wheat and flour in the export rate?

MR. MAGDEBURG. The rate which they made us was  $2\frac{1}{2}$  cents per 100 pounds lower than the domestic rate, which was supposed to fairly equalize matters and to give us a chance to do some export business.

MR. FLETCHER. Two and one-half cents a hundred pounds?

MR. MAGDEBURG. Yes, sir;  $2\frac{1}{2}$  cents a hundred on flour.

MR. WANGER. What was the rate on wheat?

MR. MAGDEBURG. The rate on wheat has been varying all the way from  $2\frac{1}{2}$  cents to 6 cents per hundred. It has been at times absolutely suicidal to grind for the export market.

MR. BACON. Two and one-half to 6 cents a hundred less than flour?

MR. MAGDEBURG. Yes, sir;  $2\frac{1}{2}$  cents to 6 cents a hundred pounds less than flour.

Now, gentlemen, it has been shown by Government statistics that

in 1900 the aggregate of flour exported was 96 per cent of the entire export of wheat and flour reduced to wheat, while in 1901 it had dropped from 96 per cent to 55 per cent, owing to the discrimination practiced. For 1899 the percentage was 86 per cent, so that in 1901 it was really 10 per cent more than the previous year, while the subsequent year it was 41 per cent less. As to why this is done I think the Industrial Commission, which has been appointed by Congress, has not been able to elicit from the railway interests any answer. It is inexplicable to me, and to many of the men in the trade, because the products of the farm will certainly go forward some time, and there is no reason why after it has reached somebody's elevator that particular grain that is in that elevator, even if it is a very large amount, should be rushed to market at a discriminative rate against flour.

It would go forward as wheat in its due course or it would be ground by the mills and would then go forward as flour in due course of time. As Mr. Jones stated, the by-products would remain here; they would be fed to the stock on the farm, the sheep or hogs and the cattle, and in this way would help to keep up the condition of the farm to a higher standard. We seek no relief from you at the expense of the carrying interests of the country. All we ask is that we be treated on a parity with everybody else. It seems to me self-evident that if I am milling in Milwaukee and am shipping my flour to the East or to Europe for sale—even if I am at a disadvantage of but  $2\frac{1}{2}$  cents per 100 pounds against my neighbor, who is perhaps better acquainted with the railroad man than I am—it is impossible for me to do business, because 5 cents on a barrel of flour is considered a good milling profit nowadays, and it would be useless for me to attempt to do business on such an inequality.

Therefore, in fairness and on correct business principles, it is necessary that all shippers stand alike with the railroads, and that no rebates or discriminations be made as against shippers or as against localities. This is all that we ask, and we do not think that asking this imposes any hardship to the railroads; none whatever. We are not asking for a particular tariff, we are not asking for a particular rate upon our flour; we are simply asking that the discriminations which have been practiced as against individual commodities and locations shall be discontinued by this bill being passed, giving the Commission more power, or giving it the power which it was supposed to have when the Commission was created. It seems to me, a layman, that the railroads should join hands with us, and insist that all should be treated alike.

I can see no reason why a railroad or a carrying corporation should favor A as against B, so long as A ships the same product and in the same quantity. There is no reason why a railway or a carrying corporation should favor one locality at the expense of and to the detriment of another. They should not. They are public highways and those public highways should be for the use and at the disposal upon equal terms of all who wish to use them, and we come to you for that relief which we think we are entitled to.

Mr. FLETCHER. Will you please tell us where these discriminations against localities come in; what are the localities which are discriminated against?

Mr. MAGDEBURG. I can not now name any particular locality, but at times wheat from beyond the Missouri River and Northwestern

points is carried through Chicago at a very much less percentage of rate than it is from Chicago or Milwaukee or Minneapolis. There are times when these discriminations take place. They are not always in vogue, but they are spasmodic, so to speak. When somebody has got a big lot to move, they want to move it, and they go to the freight agent and they say, "I have a lot of wheat to move," and they get a special rate. That does not benefit anybody only that particular individual, but it is hard on others who are not getting the same rate.

Mr. COOMBS. Let me ask you, Supposing you ship your flour to Europe, do you get any rebate because of the export shipments; is there any such thing as that coming to you as there is coming to the wheatman?

Mr. MAGDEBURG. I stated here a while ago that the railroads made an open rate which was  $2\frac{1}{2}$  cents a hundred less on flour which was exported as against flour for domestic use.

Mr. COOMBS. I did not understand that.

Mr. MAGDEBURG. That rate went into effect on the 17th of March, but it had hardly gone into effect when it was rescinded. There was one condition attached to that, and that condition was that the minimum shipment should be 35,000 pounds, and that should be the minimum carload or the minimum contract made, while there was another stipulation which compelled the shipper to load the cars to their full capacity. That was an arrangement arrived at between the milling interests and the carriers of the country to go into effect on the 17th of March.

We all, as I stated, went to work and changed our codes. We notified our correspondents that after this no proposition would be entertained for any shipment under 35,000 pounds. We changed the codes and the quantities in the codes, and got them out all ready to go into operation. But hardly had this been done when this very arrangement which had been entered into by the milling industry of the country and the shippers was recalled, and the rate which will go into effect on Monday, the 14th of April, will be precisely the same rate on flour for export as for domestic purposes. The rate will be precisely the same, while between the 17th of March and the 14th of April the rate was  $2\frac{1}{2}$  cents differential. It was not in the nature of a rebate or a remission or in the manner of an allowance in favor of one shipper against another, but it was an open, published rate.

Mr. FLETCHER. Have they changed the rate on export wheat to correspond with that change?

Mr. MAGDEBURG. No, sir; they have not.

Mr. FLETCHER. They simply went back to the old rate.

Mr. MAGDEBURG. Simply went back to the old rate. And this has disconcerted all of us and put us in a very awkward position. Now, we, as shippers, as I said before, can not see why it is going to be an injury to the railway interests of the country to insist that they shall treat all alike. We can not see why A should have a better rate than B, or why at times a locality should have an advantage over another locality. All we ask is fair treatment, and then if competition wipes out a mill or another industry here and there that must be ascribed to other causes than the question of transportation.

We are willing as a people and as producers to take our chances; but none of us are able to cope with one who is favored in the matter of freight rates, and I fully coincide with Mr. Jones, who preceded

me, in the proposition that there has been nothing that has tended to build up in this country what is popularly called the "trust" more than this discrimination between individuals and places. If I have an equal rate with my neighbor I am not afraid of him. I can mill just as well as he can if I have got the wheat, and if I have the money and can get the wheat, and in open competition I am willing to take my chances, and if I am not as smart as my neighbor, I am willing to lay down and quit. But I can not cope with him if he has an advantage in freights of 5 cents a barrel, or even more, over me, because 5 cents a barrel is absolutely the profit to-day.

All we ask is for you to put the interstate-commerce law back where it was supposed to be before the Supreme Court of the United States riddled it, and put holes in it like a sieve. There is no use in that law if it can not be enforced. We have found out that it is impracticable to have open competition between the railroads. I do not think they want it themselves. I do not think they want the chaotic conditions that existed in the eighties back again. I think there were more railroads in the hands of receivers then than there have been since the passage of the interstate-commerce act. All that we want is for this Congress to give us that relief which we are entitled to as law-abiding and taxpaying citizens of this country.

We ask you to put the law back where it was supposed to be in 1887, and then let the railroads, if they find that it is not complete, exercise their ingenuity to help perfect it—instead of tearing it down, as they have been doing for the last ten years. I can not understand why the railway corporations, who hire the best counsel in the country, when they found that there was a defect—as they claim there is a defect—in the interstate-commerce act, should not have exercised that great ingenuity and ability which they had at their command to perfect that act, which certainly was a beneficial one to them just as much as it was to the industries of the country; why they did not go to work and say to the Interstate Commerce Commission, "Here, gentlemen, we point out the defect, and we will go hand in hand with you before the Congress of the United States and ask it to put this right, as it should be, so that another railroad, or one which is willing and anxious to break the law, shall not be able to break the law."

It looks to me as though that would have been much more honest than what they have been doing for the past ten years. They have been lawbreakers all the way through, from beginning to end. They have not helped to sustain the law; they have helped to tear it down, and they have been lawbreakers ever since that law has been put in force, instead of putting their shoulders to the wheel and perfecting it, as they should have done as good and law-abiding citizens. I am not decrying the railroads, mind you. I think that there is no one I represent here to-day who wishes any wrong to be done to them; no one whom I represent asks that they be harmed. But we do insist that they shall be compelled to do right by all shippers and by the producers of the country. We feel that we are entitled to redress from this Congress.

We feel that the carrying corporations are amenable to the laws that have given them their corporate existence, and while, perhaps, there are no carriers which have their corporate existence from the Congress of the United States, as soon as they get into interstate commerce they are amenable to the Congress of the United States, just as

much as any other corporation that does any interstate business, and being amenable to the Congress of the United States, the Congress of the United States, I claim, has the right, and not only the right but it has the duty, to see to it that the transportation and carrying companies of the country are held to a strict enforcement of the letter and spirit of the law as it exists, and if that law is not sufficient as it has been interpreted by the Supreme Court of the United States, then it is the duty of Congress to make that law so that equal justice shall be meted out to all shippers and communities.

Gentlemen, I am very much obliged to you for your kind consideration and your attention. Now, if there are any questions that you wish to propound to me I will, if possible, answer them to your satisfaction.

Mr. COOMBS. I would like to ask you if discriminations in favor of exporting wheat enable the European millers to compete with the American millers?

Mr. MAGDEBURG. In what respect; in buying wheat?

Mr. COOMBS. No; they buy the wheat——

Mr. MAGDEBURG. They buy the wheat here.

Mr. COOMBS. Then can they export their flour to this country and compete with the American miller?

Mr. MAGDEBURG. No, sir.

Mr. COOMBS. Not flour?

Mr. MAGDEBURG. No, sir; they can not.

Mr. COOMBS. It does not operate?

Mr. MAGDEBURG. It does not operate backward. It operates bad enough the other way.

Mr. COOMBS. Yes; I understand that proposition. They compete with you in the European markets?

Mr. MAGDEBURG. Yes, sir; and they wipe us out absolutely. There are lots of us who are hanging on by the teeth thinking that Congress will do something for us. We do not want our brands to be extinguished over there, and we have been hanging on looking for and hoping that some change would come, and we did feel that it had come on the 17th of March.

Mr. COOMBS. I was wondering if they could compete with you over here.

Mr. MAGDEBURG. No, sir; they could not bring the flour back here and compete in our American markets with the American miller.

Mr. COOMBS. There is not any such thing as competition in the American market with the American miller?

Mr. MAGDEBURG. No, sir; there is not. There is enough of that now among ourselves without calling in any other fellows. But it has been a very detrimental business from the fact that our competitors in Europe have crowded us out of the English markets. Wheat has been exported to France, for instance, and there manufactured into flour, they of course paying the duty as it goes into France on the wheat, but immediately receiving back that duty when they show that they export a certain amount of flour, and with our own wheat these French millers have competed with us as against the flour made out of the same wheat in this country, in the London markets particularly, and in the Irish markets, as against our American flour, and we have not been able to cope with them.

Of course you must understand that the by-products of wheat are

worth, to start with, much more money in Europe than they are here for feeding purposes. And wheat going in such quantities as it has in the past year has absolutely made it impossible for us to compete, and it has compelled some of the mills to ship the by-products back into the country at a disadvantage in order that the farmers living back in the country might have their necessities met. For example, from Milwaukee we have been shipping by-products as far as 100 and 150 miles into the country backward, for the sake of furnishing the farmers with food for their cows or their other stock, which should not be. The local interests, the local mills, should furnish that.

The CHAIRMAN. A few days ago, in a committee hearing, some gentleman representing the millers insisted that the successful competition of the French miller with the American miller in the London market was due to certain dock charges in the port of London.

Mr. MAGDEBURG. I think I was here at that hearing.

The CHAIRMAN. Yes, sir. At that time he stated that the inability of the American miller to meet the French competition was caused by the onerous dock charges against the American shipper in that port which the French shipper was not subjected to.

Mr. MAGDEBURG. I brought that question up myself; I believe, Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. MAGDEBURG. That is an additional burden. That is an additional burden to the burden that I have already spoken of. It is not only the discrimination favoring wheat that is at fault, but there is the discriminative charge that is levied upon the flour coming direct from our ports or from our mills as against the French millers' flour that comes from Marseille or Havre. That is an additional charge upon the flour that is made against the American miller of 1s. 9d. per ton, which the French miller does not have to pay when he delivers flour in London. It is an additional hardship and burden that is placed upon us aside from the difference in the rates on wheat and flour.

The CHAIRMAN. Some gentleman during that investigation, representing the millers, made the statement that if that 1s. 9d. charge was abrogated, the American miller then could successfully compete with his French rival in that market.

Mr. MAGDEBURG. I presume that he made that statement upon the supposition that, all things being equal, the wheat and flour rate being the same, he would be able to do that; but with the differential between the wheat and flour rate we are absolutely unable to do so, because the difference is too great.

Mr. FLETCHER. This London dock charge is an additional burden?

Mr. MADGEBURG. An additional burden to the difference in rates between wheat and flour.

Mr. JONES. Practically this bill would have no effect on that?

Mr. MADGEBURG. No; but that, Mr. Chairman, related to the hearing on the London dock charge, and I think I was the man that brought that very question up, if I remember correctly.

The CHAIRMAN. Two or three gentlemen spoke about it.

Mr. MAGDEBURG. And then afterwards, I believe, one of the steamship gentlemen pooh-poohed the idea, claiming that the rate to Marseille and Havre was quite different from the rate to London, and in that way tried to explain the matter away, but I stated in my statement that all things being equal—

The CHAIRMAN. One or more of those gentlemen, you will remember, said that there was no French flour in the London market.

Mr. MAGDEBURG. In the London market?

The CHAIRMAN. That there was no French flour in the London market.

Mr. MAGDEBURG. Then he was talking about something that he did not know anything about, because I know that a great deal of French flour goes into the United Kingdom markets, not only London alone, but all the United Kingdom markets, and while I do not say that he intentionally stated anything wrong, I do say that is not the fact. The fact is that a great deal of flour that is manufactured in France out of American wheat, particularly out of the Kansas variety, goes into the United Kingdom in all the ports, and particularly into London. My own correspondents called my attention to it at one time, that they preferred to buy American flour coming from France, because they were always sure to get it on a certain day, while we are not in the position to deliver it with that promptness.

If we sell a man to-day 500 sacks of flour, it is quite problematic when that flour will reach the buyer. Sometimes it gets to the seaboard in ten days, and then it may lie at the seaboard for fifteen days or thirty days or forty days or even sixty days. I have known of flour lying there for three months. So that the buyer has no benefit of it; so that if a man in London to-day buys from Marseille or Havre he stipulates that the flour shall leave Marseille, for instance, on a certain day.

Mr. COOMBS. That is a natural advantage.

Mr. MAGDEBURG. Yes; a natural advantage.

Mr. COOMBS. It can not be overcome.

Mr. MAGDEBURG. No, sir.

### STATEMENT OF MR. FRANK BARRY.

Mr. BARRY. Mr. Chairman, I have here a brief submitted by the representatives of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers, which they ask that the committee shall receive and consider. It is pertinent to this question.

The CHAIRMAN. Hand it to the stenographer and it will be inserted in the hearings.

(Thereupon, at 11.55 a. m., the committee adjourned until Monday, April 14, 1902, at 10.30 o'clock a. m.)

---

#### The INTERSTATE COMMERCE COMMITTEE, *Washington, D. C.:*

The undersigned, representatives of the Missouri, Kansas, and Oklahoma Association of Lumber Dealers, having been assured that their views in writing in reference to the needed legislation in the interest of interstate commerce would be considered, beg leave to submit the following:

The interstate-commerce law enacted by Congress in 1887 was the outcome of constant public demand for at least ten years. The conditions existing at that time, and which gave rise to this demand, confront the public to-day in more aggravated form. President Arthur, in his message of December 4, 1882, recommends to Congress the regulation of interstate commerce, arraigns the corporations which own or control the railroads of adopting such measures as tend to impair the advantages of healthful competition and to make hurtful discriminations in the adjustment of freightage. He points out the fact that these inequalities have been corrected in

several of the States by appropriate legislation, but so far as such mischiefs affect commerce between the States they are subjects of national concern, and Congress alone can afford relief.

In his message in December, 1883, he points out the relations that ought to exist between the public carriers and their patrons, and lays upon Congress the responsibility of granting relief and protection to the general public in the following language:

"While we can not fail to recognize the importance of the vast railway system of the country and their great and beneficent influences upon the development of our material wealth, we should, on the other hand, remember that no individual and no corporation ought to be invested with absolute power over the interest of any other citizen or class of citizens. The right of these railway corporations to a fair and profitable return upon their investments and to reasonable freedom in their regulations must be recognized; but it seems only just that, so far as its constitutional authority will permit, Congress should protect the people at large in their interstate traffic against acts of injustice which the State governments are powerless to prevent."

I desire to draw your attention to the time when these messages were delivered—this was prior to the birth of Populism; also to the fact that they come from a Republican President of the United States, who gives authoritative expression of existing facts and of a universal demand for needed legislation. The charge has been made that this demand for the amendment of the interstate-commerce law is Populistic in its origin and character. It is no more Populistic than the origin of the law, and no law has ever been placed on our statute books which gave greater satisfaction to the general manufacturing and commercial public.

The necessity of this law is made apparent by the study of the number and the variety of cases tried and decided by the Commission before its authority was questioned and denied by the courts.

In his message of December, 1896, President Cleveland says: "The justice and equity of the principles embodied in the existing (interstate-commerce) law, passed for the purpose of regulating transportation charges, are everywhere conceded, and there appears to be no question that the policy thus entered upon has a permanent place in our legislation." He states further that the wholesome effects of this law are manifest and have amply justified its enactment, and expresses the hope "that the recommendations of the Commission upon this subject will be promptly and favorably considered by Congress." Instead of Congress heeding the advice of the nation's Chief Executive, and the nation's spokesman, and carrying out the nation's wishes in this matter, the Supreme Court acted in 1897 and most effectually deprived the Commission of the power necessary to enforce its findings. The immediate result of this decision was the inauguration of a period of extortionate rates, rank discrimination, and a general hold-up of a forbearing but a determined and outraged public.

President Roosevelt, voicing the sentiment of the general public, again calls the attention of Congress to the need of legislation along this line. He states "that the cardinal provisions of the interstate-commerce act were that railway rates should be just and reasonable and that all shippers, localities, and commodities should be accorded equal treatment;" that "experience has shown the wisdom of its purposes, but has also shown, possibly, that some of its requirements are wrong, certainly that the means devised for the enforcement of its provisions are defective." He concludes by saying that "the act should be amended. The railway is a public servant. Its rates should be just to and open to all shippers alike. The Government should see to it that within its jurisdiction this is so, and should provide a speedy, inexpensive, and effective remedy to that end. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies. The subject is one of great importance and calls for the earnest attention of Congress."

The observation of these three Presidents covers a period of twenty years. They agree that an adequate interstate-commerce law is a necessity, that it is indispensable to the administration of justice, and that the responsibility for the enactment of such a law rests with Congress. For twenty years and more the general public has demanded this law. In 1887 the Commission was created, as was then supposed, with power to stop and correct abuses. In 1897 the Supreme Court held that their powers were purely advisory. Since then the Commission is practically powerless. It is perhaps a little better than no Commission, but so far as granting practical relief is concerned the country would be just as well off without any Commission. It is contended by representatives of the railways that the granting of power to the Commission to substitute a just for an unjust rate or an equitable for a discriminative rate is equivalent to depriving the roads from the management of their property and investing the Commission with power to make rates. This was not the intention of



the law of 1887, nor the practice of the Commission under that law; neither is it the wish of the business men of to-day. What we contend for is a law which will give the Commission power, after a full, fair, and impartial hearing of both parties in interest, to put into effect a just and equitable rate, and this rate to be observed by the roads in question until the decision of the Commission is reversed by the Federal courts.

The prosperity of the railways depends on the traffic given them by the public, just as the success of a bank depends on the deposits and business of its patrons. There is no public institution in the land which is administered more autocratically than our national banks by the Comptroller of the Currency. Yet the only bankers that kick against this supervision are those who are determined to do an illegitimate business. The same is true of railroads. Honest railroad men have nothing to fear. They know that the public does not want to rob them, and that the law as it now stands affords them ample protection. They also know that it is the inalienable right of their patrons to be protected by law against the unjust methods of unscrupulous railroad managers.

The lumbermen of Kansas and Oklahoma, and the wholesalers shipping to these points, have had special experiences with the railroads on the question of lumber rates. The lumber rates to Kansas and to Oklahoma have not only been arbitrarily high, but have been in direct violation of the interstate-commerce law, which provides that a greater charge shall not be made for a short haul than for a long haul under similar conditions. It is a general rule in both passenger and freight traffic that the company having the shortest and most direct route dictates the rate. This is one of the reasons offered by the railroads why Missouri, Illinois, and Indiana and other States have a much lower average rate on lumber than Kansas and Oklahoma, although the distance from the center of production in the Southern forests to the center of consumption is much shorter, and in many instances the lumber passes through Oklahoma and Kansas to reach these more distant points. The argument advanced has been that some railroad having a direct route to some point in the lumber district makes the rate for all roads to these centers. We do not object to this rule but we do object to railroads using one method of procedure or one law to make rates to one State and another law to make rates to another State.

The rates from the central points of production to the central points of consumption in the various States are as follows:

State or Territory.	Average distance.	Average rate.
	Miles.	Cents.
Oklahoma .....	350	29½
Kansas .....	600	29
Missouri .....	600	23
Illinois .....	1,000	24
Indiana .....	1,300	25½
Ohio .....	1,500	28

This discrimination in rates greatly retards building in this Territory; it deprives us of all the natural advantages of location in close proximity to the Southern forests. This Territory has to pay an excessively high rate to enable the roads to give an extremely low rate to more remote points, in order to get into the Territory of roads hauling lumber from Northern forests.

The Kansas rate, established more than fifteen years ago, was made via Kansas City. The rate established then to the central Kansas points was 27½ cents per 100 pounds. This rate was made to conform to the existing white-pine rate from the North. Since then white pine has gone out of use, and yellow pine is used almost wholly; in addition diagonal roads were built, running south through Kansas and Oklahoma direct to the forests of Texas, Arkansas, and Louisiana, shortening the distance of the lumber haul 200 miles or more. The route for carrying the southern lumber product has been changed; the lumber comes no longer by way of Kansas City, and yet these old Kansas City rates are steadily maintained. Kansas City lies 40 miles north of the center of the State, and the opening of the diagonal roads to the south has moved the center of lumber production 80 miles west. This new condition saves to the center of Kansas consumption a haul of over 200 miles, or about 33 per cent of the entire distance. This shortened haul entitles us to a proportionate reduction in rates. But instead of reducing rates, in December, 1899, the roads advanced the rate 10 per cent to this territory, on the plea that they were entitled to share in the general prosperity of the country. Through the efforts of the attorney-general of the State and the political situation in reference to State railroad legisla-

tion, we succeeded in getting the advance changed from 2½ cents to 1 cent per 100 pounds. But still there was an advance instead of a reduction.

Another reason why lumber rates should be less than local rates per ton per mile—and unfortunately they are higher in the State of Kansas and the Territory of Oklahoma—lies in the fact that the kind of service required to haul lumber is less expensive than that required for most other commodities. The roads can use a cattle car, a box car, a flat car, or any other kind of car that may be to them convenient; the lumber is moved whenever it suits the road, without any loss to them except their own delay; the cost of loading and unloading is borne by the consignor and consignee; the payment of freight is in large amounts and is always cash; the risk is the minimum as compared with the hauling of other commodities, such as live stock, grain, and other commodities even more perishable; no suits confront the roads in the adjustment of losses; besides, the distribution of the Southern lumber trade extends over the entire year and over the entire territory traversed north and south. The Southern lumbermen are not dependent on winter snows for logging purposes; their stocks are always full, unless depleted through the channels of trade.

The territory intervening between Kansas and the Southern forests is rich in natural resources. Every foot of it affords a large amount of traffic in both directions. These considerations ought to be strong factors in determining the rates on lumber. But I shall give you a practical idea of the existing conditions. Let us suppose a train load of lumber originates at Conroe, Tex., on the Atchison, Topeka and Santa Fe Railroad, and let us suppose that this lumber is distributed along its line to Chicago, the distances and rates will be as follows:

	Distance.	Rate per 100 pounds.
	<i>Miles.</i>	<i>Cents.</i>
Gainesville, Tex .....	342	18½
Ardmore, Okla.....	382	25
Purcell, Okla.....	449	26½
Guthrie, Okla.....	513	28½
Wichita, Kans.....	653	28½
Topeka, Kans.....	815	26
Lawrence, Kans.....	842	24
Kansas City, Mo.....	882	23
Chicago, Ill.....	1,340	24

And all points between Carrollton, Mo., and Chicago on this line get a 24-cent rate. You will notice that the rate from Gainesville, Tex., to Ardmore, Okla., jumps up 6½ cents per 100 pounds in a distance of 40 miles, or 30½ mills per ton per mile, whereas the through rate to Chicago is 3.6 mills per ton per mile. The rate increases in inverse ratio to the distance the lumber is carried. This is not an isolated case, but this is a fair sample of the lumber rates adopted by all the roads operating in the State of Kansas and in Oklahoma.

Texas originates lumber within its own State, and has a stringent State railroad law. This accounts for the advance in freight as soon as the road strikes Oklahoma, and also emphasizes the necessity of an interstate railroad law. The distance from Conroe to Chicago is more than twice the distance from Conroe to Wichita, and yet the rate to Chicago is 24 cents, while the rate to Wichita, over the same road, under precisely similar conditions, is 28½ cents per 100 pounds.

Under the existing interstate commerce law the Commission is powerless. We employed the best legal talent obtainable and were advised by them that the Commission can only advise and intercede with the railroads to do the right thing by its patrons, but has no power to enforce its findings; they can not inaugurate a fair and reasonable rate, neither can we obtain redress in any court of the land except in so far that we can bring suit for recovery in individual cases where the roads have made excessive and unreasonable charges. But to prosecute a suit of this nature takes years under our present system, while in the meantime the excessive charges are carried on by the roads.

With these facts and conditions confronting us and affecting all lines of trade throughout the nation and presented constantly and persistently by the Presidents of the United States to Congress for the last twenty years for favorable action, it seems unnecessary for business men to plead with Congress to do what seems to them their plain duty. The men who are pleading with you to place on our statutes (Federal) such a law as is suggested in President Roosevelt's message are not wild-eyed Populists; they are men who own and represent capital; they are men who by brain and brawn develop the varied industries of the nation; they are men who produce the

business which makes the railroads a public necessity and a paying investment, men who understand the laws of business, men who realize the cost and appreciate good railroad service and are willing to pay for it.

We desire to draw your attention to the fact that the owners and operators of our great public railroads are men subject to like passions as other men. The fact is that the men at the heads of the various departments are able men, in the prime of life, who have an ambition to make a financial record for their respective departments. To gain their ambition they very often resort to means which are neither just nor legal, and we look to you, the only body of men in the nation who have power to give protection, to pass a law which makes justice available and easy and speedy to the humblest citizen of our land. We know that the interests of the railroads do not weigh heavier with you than the interests of the public, and that you will not by inaction make it possible for unscrupulous railroad men to rob an unprotected public.

I know that facetious and misleading arguments are made by the representatives of the railroads, claiming that this legislation would place the rate-making power in the hands of five inexperienced men, and would deprive them of the management of their business. We do not ask for any such a law; we would ask you to pass a law which while it protects the public also protects the railroads. Any other law would be unconstitutional. The proposed Nelson bill gives ample protection to both parties in interest, and does not deprive the railroads any more of the management of business than the rulings of the Comptroller of the Currency deprives national banks of the management of their business, or the rulings of the Treasury Department in administering the revenue deprives importers or merchants of the management of their business. These departments see that these lines of business are conducted in a lawful and legitimate way, and the only parties that suffer are those who are guilty of fraudulent methods. The railroads are amply protected in this measure against any mistake made by the Commission, intentionally or otherwise, and can get speedy action in any of the Federal courts.

In conclusion we desire to state that we come not to ask a favor, but simple justice. We do not desire to arraign class against class. We ask you as our representatives and lawmakers to place upon our statute book a law which will prevent this. If, in your judgment, the general public is to be left to the mercy of conscienceless railroad magnates, either repeal the interstate commerce law or let it stand in its present worthless form. Their practices of extortion and discrimination turn good and able citizens into anarchists. "Patriotism lives and grows on what it feeds upon." Create or tolerate a condition which deprives A of an equal chance with B, which will build up one man by pulling down another, or build up one city, community, or State by tearing down another, and let this condition continue for years against the protest of the greatest and most responsible men of the nation, including our Presidents, and you will create a condition of distrust, dissatisfaction, disaster, and political disaffection.

All of which is respectfully submitted.

E. M. ADAMS,  
E. S. MINER,  
E. R. BURKHOLDER,  
*Committee.*

(Dictated by E. R. Burkholder, Hillsboro, Kans.)

APRIL 5, 1902.

#### POWER OF CONGRESS OVER INTERSTATE COMMERCE.

Congress has power to constitute tribunals inferior to the Supreme Court. (Cons. U. S., section 8, clause 9.)

To regulate commerce with foreign nations and among the several States and with the Indian tribes. (Cons. U. S., section 8, clause 3, Article I.)

The making and fixing of rates is a legislative, and not a judicial, function; and the decisions are uniform in declaring that statutes creating railroad commissions, and giving them the power to make and fix rates, are not unconstitutional as delegating a legislative power which belongs only to the legislature itself. (8 Am. and Eng. Ency. of Law, 911; *Chicago & N. W. R. Co. v. Dey*, 4 Ry. & Corp. L. J., 465; 35 Fed. Rep., 866; 2 Inters. Com. Rep., 325; 1 L. R. A., 744. *Granger Cases*, 94 U. S., 113-187; 24 L. ed., 77-97. *State ex rel. Railroad & Warehouse Commission v. Chicago, M. & St. P. R. Co.*, 38 Minn., 281; 37 N. W., 782. *State ex rel. Board of Transportation v. Fremont, E. & M. Valley R. Co.*, 22 Neb., 313; 35 N. W., 118; 23 Neb., 117;

36 N. W., 308. *Tilley v. Savannah, F. & W. R. Co.*, 5 Fed. Rep., 641. *Georgia R. Co. v. Smith*, 70 Ga., 694. *New York & N. E. R. Co. v. Bristol*, 151 U. S., 556; 38 L. ed., 269. *Reagan v. Farmers' Loan & T. Co.*, 154 U. S., 362; 38 L. ed., 1014; 4 Inters. Com. Rep., 560, and cases quoted. *Ames v. Union P. R. Co.*, 64 Fed. Rep., 165; 4 Inters. Com. Rep., 835. *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479; 42 L. ed., 243. *Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940. *Smyth v. Ames*, 169 U. S., 466; 42 L. ed., 819.)

When the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon all others. (*Johnson v. Towsley*, 13 Wall, 72; 20 L. ed. 485.)

The legislature's determination, either directly or indirectly, of what is reasonable, is conclusive, subject only to charter rights and to the fact that the rates established will give some compensation to the carrier. (*Atty. Gen. v. Old Colony R. Co.*, 160 Mass., 62; 22 L. R. A., 112. *Chicago & N. W. R. Co. v. Dey*, 35 Fed. Rep., 866; 2 Inters. Com. Rep., 325; 1 L. R. A., 744.)

The power to regulate is to prescribe the rule by which the commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. If, as has already been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States. (*Gibbons v. Ogden*, 9 Wheat., 1, 197; 6 L. ed., 23, 70.)

It is obvious that the Government, in regulating commerce with foreign nations and among the States, may use means that may also be employed by a State in the exercise of its acknowledged powers—that, for example, of regulating commerce within a State. (*Gibbons v. Ogden*, 9 Wheat., 204; 6 L. ed., 72.)

The power to regulate commerce \* \* \* amounts to nothing more than a power to limit and restrain it at pleasure. (*Gibbons v. Ogden*, 9 Wheat., 227; 6 L. ed., 77.)

It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which induced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce arising among the States. (*Brown v. Maryland*, 12 Wheat., 446; 6 L. ed., 688.)

The power to regulate commerce includes that of punishing all offenses against commerce. (*United States v. Coombs*, 12 Pet., 72; 9 L. ed., 1004.)

The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality amongst the several States as to commercial rights, and to prevent unjust and invidious distinctions which local jealousies or local and partial interests might be disposed to introduce and maintain. (*Veazie v. Moor*, 14 How., 574; 14 L. ed., 547.)

Commerce is a term of the largest import. \* \* \* The power to regulate it embraces all the instruments by which such commerce may be conducted. (*Welton v. Missouri*, 91 U. S., 280; 23 L. ed., 349.)

The power conferred upon Congress to regulate commerce with foreign nations and among the several States is not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the new developments of time and of circumstances. It was intended for the government of the business to which it relates at all times and under all circumstances; and it is not only the right, but the duty, of Congress to take care that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation. (*Pensacola Teleg. Co. v. Western U. Teleg. Co.*, 96 U. S., 9; 24 L. ed., 710.)

The power to regulate that commerce, \* \* \* vested in Congress, is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted. \* \* \* The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. (*Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 203; 29 L. ed., 161; 1 Inters. Com. Rep., 382.)

When a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. (*The Daniel Ball*, 10 Wall., 565; sub nom. *The Daniel Ball v. The United States*, 19 L. ed., 1002.)

But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. (*Coe v. Errol*, 116 U. S., 517; 29 L. ed., 715.)

This species of legislation is one which must be, if established at all, of a general and national character. (*Wabash, St. L. & P. R. Co. v. Illinois*, 118 U. S., 577; 30 L. ed., 251.)

For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a system. (*Mobile County v. Kimball*, 102 U. S., 691; 26 L. ed., 238.)

The power to regulate commerce embraces a vast field, containing not only many but exceedingly various subjects quite unlike in their nature. (*Cooley v. Philadelphia Port Wardens*, 12 How., 299; 13 L. ed., 996.)

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations. (*Brown v. Houston*, 114 U. S., 622; 29 L. ed., 257.)

The uses of railroad corporations are public, and therefore they are subject to legislative control in all respects necessary to protect the public against danger, injustice, and oppression. (*New York & N. E. R. Co. v. Bristol*, 151 U. S., 556; 38 L. ed., 269.)

Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several States is to be governed, and may, in its discretion, employ any appropriate means, not forbidden by the Constitution, to carry into effect and accomplish the objects of a power given to it by the Constitution. (*Interstate Commerce Commission v. Brimson*, 154 U. S., 447; 38 L. ed., 1047; 4 Inters. Com. Rep., 545.)

The making and fixing of rates by either a legislature directly or by a commission do not work a deprivation of property without due process of law. (*Munn v. Illinois*, 94 U. S., 113; 24 L. ed., 77. *Davidson v. New Orleans*, 96 U. S., 97; 24 L. ed., 616. *Stone v. Farmers' Loan & T. Co.*, 116 U. S., 307; 29 L. ed., 636. *Dow v. Beidelman*, 125 U. S., 680; 31 L. ed., 841; 2 Inters. Com. Rep., 56. *Minneapolis & St. L. R. Co. v. Beckwith*, 129 U. S., 26; 32 L. ed., 585, and cases cited. *Budd v. New York*, 143 U. S., 517; 36 L. ed., 247; 4 Inters. Com. Rep., 45. *New York & N. E. R. Co. v. Bristol*, 151 U. S., 556; 38 L. ed., 269. *Reagan v. Farmers' Loan & T. Co.*, 154 U. S., 362; 38 L. ed., 1014; 4 Inters. Com. Rep., 560.)

The State does not lose the right to fix the price because an individual voluntarily undertakes to do the (public) work. (*Budd v. New York*, 143 U. S., 517; 36 L. ed., 247; 4 Inters. Com. Rep., 45.)

The Nebraska statute fixing maximum rates is not obnoxious to the fourteenth amendment. (*Ames v. Union P. R. Co.*, 64 Fed. Rep., 165; 4 Inters. Com. Rep., 835.)

The compelling of railway companies to comply with the order of railroad commissioners regulating rates is due process of law. (8 Am. & Eng. Enc. of Law, 911. *Chicago, M. & St. P. R. Co. v. Becker*, 32 Fed. Rep., 849. *Louisville & N. R. Co. v. Railroad Commission*, 19 Fed. Rep., 679; 16 Am. & Eng. R. Cas., 1. *Railroad Comrs. v. Oregon R. & Nav. Co.*, 17 Or., 65; 2 L. R. A., 195; 35 Am. & Eng. R. Cas., 542. *State ex rel. Railroad & Warehouse Commission v. Chicago, M. & St. P. R. Co.*, 38 Minn., 281; 37 N. W., 782. *Stone v. Natchez, J. & C. R. Co.*, 62 Miss., 646. *Stone v. Farmers' Loan & T. Co.*, 116 U. S., 307; 29 L. ed., 636. *State ex rel. Board of Transportation v. Fremont, E. & M. Valley R. Co.*, 22 Neb., 313; 32 Am. & Eng. R. Cas., 426. *People v. New York, L. E. & W. R. Co.*, 104 N. Y., 58. *State v. New Haven & N. Ry. Co.*, 37 Conn., 153.)

The principal objects of the interstate-commerce act were to secure just and reasonable charges for transportation. \* \* \* (*Interstate Commerce Commission v. Baltimore & O. R. Co.*, 145 U. S., 263; 36 L. ed., 699; 4 Inters. Com. Rep., 92.)

It is difficult to perceive how the power to fix and regulate the charges for such transportation can be considered in any other light than that of a power to regulate commerce. (*Illinois C. R. Co. v. Stone*, 20 Fed. Rep., 468.)

It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish, and to descend to the most minute directions if it shall be deemed advisable. (*Cooley, Const. Lim.*, 732, quoted with approval by Mr. Justice Field in the case of *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196; 29 L. ed., 158; 1 Inters. Com. Rep., 382.)

That this power to regulate by fixing charges for interstate transportation is vested solely in Congress by Article I, section 8, paragraph 3, of the Constitution of the United States, is, in my opinion, equally well settled by numerous decisions of the Supreme Court of the United States. (*Mobile & O. R. Co. v. Sessions*, 28 Fed. Rep., 592.)

Several of the State statutes, under State constitutions, containing nearly identical

provisions on the subject as the Federal Constitution, allowing State railroad commissions to make and fix railway rates for such States, which said rates were to be operative until set aside by the courts, have been upheld as valid and constitutional by the United States Supreme Court. (See *Pensacola & A. R. Co. v. State (Fla.)*, 3 L. R. A., 661, with extensive notes to that case and notes to *Winchester & L. Turnp. Road Co. v. Croxton (Ky.)*, 33 L. R. A., 177.)

This Federal Commission has assigned to it the duties and performs for the United States in respect to that interstate commerce committed by the Constitution to the exclusive care and jurisdiction of Congress the same functions which State commissioners exercise in respect to local or purely internal commerce over which the State appointing them have exclusive control. Their validity in their respective spheres of operation stands upon the same footing. The validity of State commissions invested with powers as ample and large as those conferred upon the Federal Commission has not been successfully questioned when limited to that local or internal commerce over which the States have exclusive jurisdiction; and no valid reason is seen for doubting or questioning the authority of Congress, under its sovereign and exclusive power to regulate commerce among the several States, to create like commissions for the purpose of supervising, investigating, and reporting upon matters or complaints connected with or growing out of interstate commerce. What one sovereign may do in respect to matters within its exclusive control the other may certainly do in respect to matters over which it has exclusive authority. (*Kentucky & I. Bridge Co. v. Louisville & N. R. Co.*, 37 Fed. Rep., 567; 2 Inters. Com. Rep., 380; 2 L. R. A., 289.)

The power granted to Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit only of one uniform system or plan of regulation throughout the country. \* \* \* In the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation and not to a multitude of systems. (*Robbins v. Shelby County Taxing Dist.*, 120 U. S., 489; 30 L. ed., 694; 1 Inters. Com. Rep., 45. *Stoutenburgh v. Hennick*, 129 U. S., 141; 32 L. ed., 637.)

Congress may, under certain conditions, reduce the rates of fare on the Union Pacific Railroad, if unreasonable, and fix and establish the same by law. (12 Stat. L., 497, chap. 120, sec. 18.) This statute is discussed by Mr. Justice Brewer in *Ames v. Union P. R. Co.*, 64 Fed. Rep., 165; 4 Inters. Com. Rep., 835, and held not to conclude the State of Nebraska from fixing rates until Congress takes action.

This act (of Colorado) was intended to apply to intrastate traffic the same wholesome rules and regulations which Congress two years thereafter applied to commerce between the States. (*Union P. R. Co. v. Goodridge*, 149 U. S., 680; 37 L. ed., 896.)

The Interstate Commerce Commission is an administrative board, and the courts are only to be resorted to when the Commission prefers to enforce the provisions of the statute by a direct proceeding in the court, or when the orders of the Commission have been disregarded. (*Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 162 U. S., 184; 40 L. ed., 935; 5 Inters. Com. Rep., 391.)

The entire commerce of the United States, foreign and interstate, is subject to the provisions of the act of Congress to regulate commerce. (*Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405.)

Upon the power of legislatures to fix tolls, rates, or prices, see note to case of *Winchester & L. Turnp. Road Co. v. Croxton (Ky.)*, 33 L. R. A., 177.

A statute imposing a penalty for charging more than just and reasonable compensation for the services of a carrier, without fixing any standard to determine what is just and reasonable, thus leaving the criminality of the carrier's act to depend on the jury's view of the reasonableness of a rate charged, is in violation of the constitutional provision against taking property without due process of law. (*Louisville & N. R. Co. v. Com.*, 99 Ky., 132; 33 L. R. A., 209.)

Penalties can not be thus inflicted at the discretion of a jury. \* \* \* The legislature can not delegate this power to a jury. If it can declare it a criminal act for a railroad corporation to take more than a "fair and just return" on its investments, it must, in order to maintain the validity of the law, define with reasonable certainty what would constitute such "fair and just return." (*Louisville & N. R. Co. v. Railroad Commission*, 19 Fed. Rep., 679.)

The Supreme Court of the United States, in *Railroad Commission Cases*, 116 U. S., 336, sub nom. *Stone v. Farmers' Loan & T. Co.*, 29 L. ed., 646, refers to the last-named case and substantially approves it.

Although a statute has been held to be unconstitutional which left it to the jury to determine whether or not a charge was excessive and unreasonable in order to ascertain whether a penalty is recoverable, yet, where the action is merely for recovery of the illegal excess over reasonable rates, this is a question which is a proper one for a jury. (8 Am. & Eng. Ency. of Law, 935.)

it did not prescribe what should constitute a reasonable rate; but as the statute declared that the rate fixed by the commission should be prima facie evidence that it was reasonable, although the accused could show in defense that it was not reasonable, the supreme court of the State held that the statute was sufficiently definite, since the rate was fixed, although it was subject to attack in the courts. To the claim that the commissioners' rate would not secure the accused from conviction if it was excessive, the court declared that the State was precluded from denying that the commissioners' rate was a reasonable one. (*Burlington, C. R. & N. R. Co. v. Dey*, 82 Iowa, 312; 3 Inters. Com. Rep., 584; 12 L. R. A., 436.)

The same decision in substance was made on this question by Judge Brewer, then of the United States circuit court, in the case of *Chicago & N. W. R. Co. v. Dey*, 35 Fed. Rep., 866; 2 Inters. Com. Rep., 325; 1 L. R. A., 744.

The Illinois act, providing that a charge by a railroad company of more than reasonable rates shall constitute extortion, is held to be sufficiently definite when construed with another section which provides that the railroad commission shall make a schedule of reasonable maximum rates. *Chicago, B. & Q. R. Co. v. People*, 77 Ill., 443.

And the validity of this provision of the Illinois statute has been further established by the Illinois supreme court. See *Chicago, B. & Q. R. Co. v. Jones*, 149 Ill., 361; 4 Inters. Com. Rep., 683; 24 L. R. A., 141; *Stone v. Farmers' Loan & T. Co.*, 116 U. S., 307; 29 L. ed., 636, deciding the same way the Mississippi statute.

The Georgia statute is not violated unless the rates charged exceed those fixed by the Commission. *Sorrell v. Central R. Co.*, 75 Ga., 509.

But in order to constitute a crime the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act can not depend upon whether a jury may think it reasonable or unreasonable. *Tozer v. United States*, 52 Fed. Rep., 917; 4 Inters. Com. Rep., 245.

An inquiry whether rates of carriers are reasonable or not is a judicial act; but to prescribe rates for the future is a legislative act. That Congress has transferred to any administrative body the power to prescribe a tariff of rates for carriage by a common carrier is not to be presumed or implied from any doubtful and uncertain language. If Congress had intended to grant such a power to the Interstate Commerce Commission, it can not be doubted that it would have used language open to no misconstruction, but clear and direct. *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479; 42 L. ed., 243.

In the case of *Munn v. Illinois*, 94 U. S., 113, 24 L. ed., 77, the Supreme Court of the United States, after a thorough review of the American and English authorities, has laid down the following fundamental principles governing public carriers and other quasi-public institutions:

1. Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his own property.

2. It has, in the exercise of these powers, been customary in England from time immemorial, and in this country from the first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, auctioneers, innkeepers, and many other matters of like quality, and in so doing to fix a maximum charge to be made for services rendered, accommodations furnished, and articles sold.

3. The fourteenth amendment to the United States Constitution does not in any wise amend the law in this particular.

4. When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to be controlled by the public.

5. The limitation by legislative enactment of the rate of charges for services rendered in an employment of a public nature, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one.

Thus the highest court has permanently established the broad principle that the public have the right to regulate charges in all enterprises affected with a public use. To this doctrine all the courts have steadfastly adhered. In this leading case it was also held that the courts had no right to interfere with the rates fixed by the law-making power. This doctrine, however, has been since somewhat qualified in the case of *Reagan v. Farmers' Loan & T. Co.*, 154 U. S., 412, 38 L. ed., 1028; 4 Inters. Com. Rep., 1028, and other cases there cited, where it is held that when rates are confiscatory the courts may so declare and relegate the matter back to the lawmaking power for new rates, by which a reasonable profit is left to the carrier. But the principle that the legislative power, either directly or indirectly through a commission, can fix rates of freight and passenger traffic within this constitutional limitation, has been uniformly upheld in all the decisions of the United States Supreme Court upon this subject.

MONDAY, *April 14, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. Gentlemen, the committee is ready to proceed.

### STATEMENT OF MR. R. S. LYON.

Mr. LYON. Mr. Chairman, I represent the Chicago Board of Trade, in part. Some gentlemen here will follow me who also represent that body. What I have to say will not take up very much of your time.

The CHAIRMAN. Let me ask you: A number of gentlemen have said that they represent this body and that body and the other. Please explain to the committee how, as a representative, you come here. Of course you have a perfect right to appear on your own personal account, and we are very glad to see you, but when a man comes in a representative way it is always desirable to know how anxious those whom he represents were to have him come.

Mr. LYON. Perhaps my credentials here would do if I should read them.

The CHAIRMAN. That will do.

(Mr. Lyon here read a letter from Mr. Warren, the president of the Board of Trade of Chicago, notifying him of his appointment to appear before the committees of Congress in regard to the pending bill.)

The CHAIRMAN. That was the action——

Mr. LYON. Of the board of directors.

The CHAIRMAN. Yes.

Mr. LYON. Of course the board of directors have only powers to take action by the particular committees——

The CHAIRMAN. What I want to get at is, I want to know how far there is a sentiment in that board of trade that authoritatively has asked gentlemen to come here, because that indicates the sentiment. A complimentary request from the president of the board asking some gentleman to appear here who is traveling in this part of the country does not mean much, but if the board of trade, by their own action, had a meeting and thought this a matter of sufficient importance to have a gentleman come here specially to represent them, that means one thing——

Mr. LYON. Without flattering myself, Mr. Chairman, and without any egotism, I would say that in 1899 I was the president of that organization, and consequently I know a little something of the powers delegated to the directors. The board of directors are elected from that board of trade, 1,700 in number, to regulate its affairs. We have our committees, whose special duty it is to deal with these subjects, governing particular subjects that come from outside matters up to this board of directors. Those matters are never referred to the board as a whole, consequently the directors act in everything for the board. Now, this board indorse, I believe—although I am not a member now, I know they indorse—the Corliss bill, and they are anxious to have those recommendations carried out, and they have asked Mr. Chadwick to come here, and myself, and he will follow me after a while, and perhaps go into it a little more than I.



The CHAIRMAN. When was this legislation as embodied in the Corliss bill considered by the board of trade of Chicago?

Mr. LYON. By the directors of the board of trade?

The CHAIRMAN. No; by the board of trade.

Mr. LYON. It never was.

The CHAIRMAN. It never was?

Mr. LYON. No, sir. As I explained it awhile ago, the board of trade as a corporate body delegates to the directors its powers to do anything in a matter. Of course the individual members of the board, some 1,800, may have divergent views.

The CHAIRMAN. When was the subject considered by the board by directors?

Mr. LYON. I think some time since the first of January. I am not positive, but I think that is it. It is recently, since the bill has been before you.

The CHAIRMAN. Were the provisions of the bill discussed by the directory?

Mr. LYON. I think so; I was not there.

The CHAIRMAN. They had copies of the bill?

Mr. LYON. Yes, sir; Mr. Barry corrects me. He says that there was a copy of a resolution adopted by the board of directors filed with this committee.

The CHAIRMAN. Very well, I do not want to be unduly inquisitive, but I simply want to know how far this subject had been a matter of discussion, and how far there was a public opinion on the part of the board of trade of Chicago upon the subject.

Mr. LYON. Yes, sir.

The CHAIRMAN. And whether that had been——

Mr. LYON. Possibly I can, in what I am going to say to you here, go into that sufficiently. Mr. Chadwick, who is to follow me, is a director, and may answer you more fully. I have been out of office for two years.

It would seem possibly a little superfluous to one at this day to appear before a committee of Congress and show that the interstate-commerce law had been violated or to bring any evidence to that end. You have had abundant evidence and are surfeited, no doubt, with facts showing this to be the case; consequently I will not attempt to take up any of your valuable time to that end. Representing, as I have the honor to at this time, the great grain and shipping trade of the Board of Trade of the city of Chicago, I come before you to urge some change in the interstate-commerce law that will give us equal, stable, and uniform rates to and from all points.

The CHAIRMAN. Let me interrupt you there just a moment. If these interruptions are embarrassing to you, however——

Mr. LYON. As far as I can answer you, I will be glad to do so. I am not a lawyer at all.

The CHAIRMAN. You have spoken of the grain shippers of Chicago?

Mr. LYON. Yes.

The CHAIRMAN. Now, we have heard from many gentlemen here who represent the flour interests——

Mr. LYON. Yes, sir.

The CHAIRMAN (continuing). Who complain of you gentlemen shipping grain, and especially the shippers of wheat, of the very unusual facilities that you gentlemen have.

Mr. LYON. As I proceed you will perceive that I am a very small item. I am what is called a small shipper.

The CHAIRMAN. But you are conversant with the subject somewhat?

Mr. LYON. Yes, sir; I am, a little.

The CHAIRMAN. Now, if you will explain to us how this discrepancy of opinion arises between these gentlemen who are making complaint of the undue advantages that you have——

Mr. LYON. You are speaking of the millers?

The CHAIRMAN. Of the millers.

Mr. LYON. That I can not say. I am absolutely powerless to do that. I can not do that. You have had gentlemen here who can explain that to you. I am not a miller, but simply a small shipper.

The CHAIRMAN. It is from the fact that you are not a miller, but a shipper of grain, that I have come to you for information.

Mr. LYON. I do not know as to that. The Chicago Board of Trade, handling as it does the greatest bulk of grain of any market in the world, reaching out in all directions, West, Northwest, and Southwest, to bring this grain to market, and in turn supplying the markets of the world, both domestic and foreign, must of necessity be the barometer of prices and feel any and all outside influences that affect its prices. So that any deviation from tariff rates, known always, whether made in the country west, tributary to Chicago, whereby grain is diverted from its natural channel, or even by our own members, competitors with one another, is immediately felt and the market price of commodities dealt in on the Chicago market is influenced to a greater or less degree.

The CHAIRMAN. May I interrupt you again? What do you mean by grain being diverted from its natural channels?

Mr. LYON. Well, grain that is naturally—I will assume that—naturally tributary to Chicago, by reason of its lake advantages, is bought by Eastern parties, or perhaps parties on our own board, which is not sent through Chicago, but which reaches its destination by being sent around to outside junction points east of the river, or perhaps to St. Louis; and that we feel very much in that way.

The CHAIRMAN. Give us an illustration, if you please, of that diversion; some instance of a diversion from a natural channel.

Mr. LYON. Well, we will call the natural channel, for instance, Chicago. Now, our merchants in Chicago know where all this grain in Iowa lies, and in Nebraska, and in the Northwest and Southwest, and possibly through capital or some way else control it.

The CHAIRMAN. Give us an illustration of where it goes at times.

Mr. LYON. It goes to the seaboard.

The CHAIRMAN. By what routes?

Mr. LYON. Routes that are around Chicago, by belt lines, by junction points that do not bring it to Chicago at all.

The CHAIRMAN. That is, that do not bring it to Chicago elevators?

Mr. LYON. That does not bring it to Chicago. Yes; to Chicago elevators, if you choose to use that expression. Chicago elevators are where they take the lake route. But the first thing we know somebody is buying a lot of grain and taking it off to Baltimore and New York by a junction route and we do not get the benefit of that.

Mr. CORLISS. What harm does this diversion do?

Mr. LYON. By its going by a route different from that we have. For instance, the grain might be worth more in Chicago. Two and

two make four; it does not make three. We know that if it goes to Chicago it would make a better price than if it goes around.

Mr. CORLISS. Then you claim that these diversions are in consequence of a rate that is unlawful?

Mr. LYON. Yes, sir.

Mr. TOMPKINS. A discriminating rate?

Mr. LYON. A discriminating rate; yes, sir.

The CHAIRMAN. Suppose that is done, suppose the rate is discriminating against Chicago, or against this natural route that you speak of, it must be a lower rate?

Mr. LYON. Yes, sir.

The CHAIRMAN. Then it would inure to the benefit of the people at some other point than Chicago?

Mr. LYON. Yes, sir.

The CHAIRMAN. That, then, is the burden of your complaint?

Mr. LYON. Yes, sir. Well——

The CHAIRMAN. That under this rate, whatever it is, the commission merchants at some other place would have the benefit, rather than Chicago.

Mr. LYON. Presumably so.

The CHAIRMAN. Then your complaint is a local one and a personal one?

Mr. LYON. Possibly. Yes; yes, it is.

Mr. CORLISS. If you had the same rate as the other party, could you control the freight?

Mr. LYON. To a greater or less degree, because we own the property.

Transportation is necessary to the people. It is as absolutely a necessity to the prosperity of our nation as the air we breathe. Everyone should be treated alike, whether a large shipper, supplying the wants of foreign countries, or a small shipper, taking care of the needs of this country. All sorts of devices known to shippers and railroads should be open, and the great transportation lines of this country should treat each and every one alike. To use the language of one of our learned judges, "Freight rates should be as stable as postage rates, to everywhere and from everywhere alike." This is all we ask, and for such a law properly carried out we are willing to stand, to survive or fall.

I am a member of a grain firm and have been for the past twenty-four years. Formerly we belonged to that coterie of grain shippers designated as "small shippers." Previous to and about 1890 we sought to supply the wants of grain men in New England, New York, Pennsylvania, and Ohio, and throughout the Southern States, doing nothing but a domestic trade, and did exclusively a shipping business. Gradually this trade became smaller by reason of encroachments of larger shippers more favored by rates, and we were at last driven almost entirely out of the shipping business and obliged to take up other branches of the grain business. There are combinations of Western elevator companies with railway managers on different lines of roads, and all more or less competitors. Each railway wants the business. They are secret and powerful combinations with mutual desires for securing traffic. The rates and devices known only to railway men are never playthings.

The act to regulate commerce was passed solely to secure an equal distribution of the benefits of transportation, and to correct abuses

which had imperceptibly and gradually crept into the administration of the vast powers conferred upon railroad corporations.

The CHAIRMAN. Let me interrupt you there. I wish you would explain a little further the result of these combinations that you have referred to between the elevators along a given line of railway and the carrier; how do they operate? How do they operate upon the grain raiser; for his benefit or against him?

Mr. LYON. You are talking about the farmer?

The CHAIRMAN. Yes, sir.

Mr. LYON. Well, I am not one of the people who think that a high rate will give the farmer more for his grain.

The CHAIRMAN. No; these rates are evidently lower rates, because they have the potency that diverts this commerce from natural channels.

Mr. LYON. Yes, sir.

The CHAIRMAN. Now, if that is true——

Mr. LYON. Yes, sir.

The CHAIRMAN (continuing). And I assume that you know about it, the rate must be lower?

Mr. LYON. Yes, sir.

The CHAIRMAN. Now, if the rate is lower, who is the beneficiary?

Mr. LYON. Both the railroads and the elevators, in combination together.

The CHAIRMAN. The grain raiser is not a participator in that?

Mr. LYON. I do not know that he would be. I can not see that he would.

The CHAIRMAN. Ordinarily the shipper who has an advantage with a carrier has more of means with which to increase his business?

Mr. LYON. Yes, sir. The great elevator people of Chicago are connected with the railroads.

The CHAIRMAN. But I am not speaking now of great elevators in Chicago, because the traffic is diverted from them——

Mr. LYON. From whom?

The CHAIRMAN. The great grain elevators in Chicago?

Mr. LYON. No; I said they were combinations with the railroads.

The CHAIRMAN. I thought you spoke of the elevators along the lines of the railways.

Mr. LYON. I meant at junction points. I said the combination of Western railway companies with the railroad managers on the different lines of roads. See? The railroads themselves.

The CHAIRMAN. You will not understand, now, that the query I am making is a criticism or anything that is to be construed that way. We want to get some of the detailed information that you gentlemen have. When you talk about the generalities of this subject we have some ideas about that subject, and we can get that sort of information for ourselves.

Mr. LYON. I presume so.

The CHAIRMAN. But you have peculiar knowledge from your business relations, and that is what we want, to see what things the carriers do do in violation of the law, and what we can do, if anything, to correct that.

Mr. LYON. We know that the railways themselves—I say we know; now, I can not prove it to you by any evidence that might go in a court, but we know intuitively that the rates from Iowa, Nebraska,

and the west are cut to Chicago, and we know they are cut out of Chicago east.

The CHAIRMAN. Now, let us stop right there and find out who is the beneficiary of that cut.

Mr. LYON. The grain raisers themselves are not.

The CHAIRMAN. Not the raisers themselves?

Mr. LYON. Not the farmer, in my judgment.

The CHAIRMAN. The benefit begins, then, after the grain has accumulated in the local elevator, and the grain raiser, you think, has no participation in that benefit?

Mr. LYON. I can not reason it out in my mind that the farmer gets any benefit of any lower rate than he does from a higher rate.

The CHAIRMAN. Then in this particular case the local competition—the influence of that is suspended as concerns the farmer?

Mr. LYON. Possibly so. Of course, temporarily the farmer, if he has not sold his grain, might get a little benefit from a higher market or a cheaper freight rate; it might bring a little higher price to him for his grain temporarily, but these things regulate themselves after a while.

I do not want now to go into the question of the speculative part of it, because I am not in that business—about the hidden grain that you have all heard so much of. I will not go into that. It is not here at all. But that very question might enter somewhat into the discussion here as to the railroad rates.

Mr. ADAMSON. Do they make these combinations at certain seasons, after the farmer has sold out his crop?

Mr. LYON. Yes, sir; to a great degree they do. The farmer generally sells his crop in the fall.

The CHAIRMAN. You say the farmer sells his grain in the fall?

Mr. LYON. As a general rule.

The CHAIRMAN. Does not that depend upon circumstances? Where there is great poverty in the country it is sold early; and we have great famines, and all that sort of thing.

Mr. LYON. Yes; but generally the farmer has sold the grain to the small elevator dealer at his station in advance.

The CHAIRMAN. If he has money in bank he does not do it.

Mr. LYON. I would ask these gentlemen who are here before the committee this morning to correct me if I am wrong on any of these points.

Mr. ADAMSON. Do you not suppose this idea has something to do with the variation of rates—that in the crop season, when the crop is moving, the railroads have more than they can haul? I want to know what the reason is. Is it not that they make cheaper rates later in the season in order to get what hauling they can?

Mr. LYON. Not necessarily. The supply and demand would cover that, sir.

Mr. ADAMSON. Is not that a part of the variation of supply and demand?

Mr. LYON. Possibly so.

Mr. ADAMSON. And while the crop is moving the railroads have all they can do, and they cut rates later on to get more business?

Mr. LYON. But what I am after is, I do not want the railroads to give a rate to one man and deny it to me; that is the whole meat in the cocoanut on that.

Mr. ADAMSON. If they give you one rate and then, under later conditions, give a lower rate to meet that change——

Mr. MANN. Your theory is that if they all had the same rate there would be more competition in purchasing from the farmer?

Mr. LYON. Yes, sir.

Mr. MANN. And if they can afford to give a low rate to one, they can afford to give it to everybody?

Mr. LYON. Yes, sir; that is the meat in the cocoanut.

This Interstate Commerce Commission was not framed to impair business interests, but to conserve and protect. In the words of the Interstate Commerce Commission:

It had for its object to regulate a vast business to the requirements of justice, and was not passed for a day or a year; it had permanent benefits in view, and to accomplish these with the least possible disturbance to the immense interests involved.

But as the years since the enactment of the law have gone on and the law itself has been tried, it seems to-day as if the Commission (without reflecting in any manner upon the character and ability of its members) has signally failed in the exercise of controlling power; its mandates have either been supinely enforced or altogether evaded. The great complaint against the law and the Commission to-day is that it is a creation powerless to enforce its decrees.

I am of the opinion that the bill now before the committee, and known as "H. R. No. 8337," will meet the requirements and give to the interstate commerce law greater effectiveness. I believe the interstate commerce law should be so amended as a whole that under the light of experience and decisions of the courts of the United States the rights and interests of the people in general should be properly safeguarded under it and defined by it, and the responsibility of carriers carefully fixed and defined in it; and the power and scope of the Interstate Commerce Commission, including the right to fix rates and enforce their decisions, properly established by it.

I am not wise enough, nor am I lawyer enough to go into the details of this bill, its common sense appeals to me and I leave to others, and without doubt you have heard them, to argue out the amendments proposed in the bill now before you. My own experience in freight matters makes me believe that such portions of the bill now before you as relate to the imprisonment clause in the original law should be dropped and that fines against corporations violating the law be imposed. Railroad officials and agents hold——

The CHAIRMAN. Now, let me ask you why would you change that feature of the law?

Mr. LYON. Let me continue. Railroad officials and agents hold social positions among themselves and in the community; different shippers are personal friends of one another; for one to complain of another and send him to imprisonment for violating a law which we know emanates from corporations themselves goes against our best feeling. But if a fine could be imposed on corporations, who are in reality above agents and general managers, and in fact the real offenders, our courts would now be full of violators of the law. Do you see the point now?

Mr. ADAMSON. We can not get the people who come here to give us the names of these men.

Mr. LYON. Of course not. You do not suppose I would tell you.

Mr. ADAMSON. What is the use of enacting more penal laws, then?

Mr. LYON. Fine the corporations. Fine the thing that does the wrong.

Mr. ADAMSON. How can we fine it. If we could get a reporter and get some evidence——

Mr. LYON. I believe, gentlemen, that I would not be here to-day asking you for relief if this law was in the original act; and if so, I do not believe there would be many railroads paying dividends, and many would be in bankruptcy, that is my belief.

The CHAIRMAN. Your argument, if I understand it, is about this: Here is a violator of the law. I know of his violations of the law; they are harmful to my interests. Yet that man is my personal friend, he is my familiar associate, and therefore because he would be imprisoned I will not complain of him. I will not set the machinery of the law at work against him because it would disturb my sensibilities in some way or interrupt friendly relations that exist between me and my friend.

Mr. LYON. We will go further than that——

The CHAIRMAN. Therefore you desire the law to be changed so that it will strike some other person——

Mr. LYON. Not "person."

The CHAIRMAN. Well, an artificial person——

Mr. LYON. Yes, sir.

The CHAIRMAN (continuing). That is, above my friend and the employer of my friend?

Mr. LYON. That is right.

The CHAIRMAN. Is that right?

Mr. LYON. Yes, sir.

The CHAIRMAN. In other words, you, in conjunction with the other gentlemen who are in with this man, have the power in conjunction with the other gentlemen who are informed to bring about punishments, and you do not use that power?

Mr. LYON. I suppose we have, but it is hard work; it is a very difficult matter.

Mr. ADAMSON. The same difficulty exists in other connections, does it not, except in criminal cases, where there are authorities who bring you up and make you swear?

Mr. LYON. Let me say this: I believe that if the Interstate Commerce Commission had agents in the markets of the West, in Omaha and Kansas City, and also in the markets of the East, they could find out the violators of the law in every case; I mean men who were in touch with them, men whom they could go to. Do you see?

Mr. CORLISS. Do I understand you to state that if this act, this bill now under consideration, were enacted into law and enforced it would bankrupt the railroads?

Mr. LYON. No; I believe that—yes, pretty near. Some of the railroads. Not all.

Mr. TOMPKINS. That is, if the offenses were as frequent as they are now?

Mr. LYON. I would have every carload that was shipped on a road——

Mr. ADAMSON. You do not mean that these roads would be bankrupt from the reduction in rates, from the rates they would have to receive, but from the fines they would have to pay?

Mr. LYON. Yes, sir; from the fines.

Mr. CORLISS. Oh, you left the impression that it would ruin the railroads—

Mr. LYON. No, sir; I did not mean that.

Mr. ADAMSON. If they quit bucking up against the offenses and observed the law, you do not mean to say that it would affect them?

Mr. LYON. No, sir.

Mr. CORLISS. It would not affect the railroads if they observed the law?

Mr. LYON. No, sir. I do not care what the rates would be.

Mr. CORLISS. But whatever anybody else pays—

Mr. LYON. Whatever the railroads say is to be the rate. Let them be honest and I will be honest, and let everybody else be honest; that is the common sense of it.

The temper, if not the spirit, of railway managers toward the successful administration of the interstate-commerce law has become more hurtful to the railways than to the public. But these corporations are in no sense exempt from public opinion because of the nearly universal, if not organized, opposition to laws enacted for the purpose of regulating their relations with the people. It is not too much to assume that the people hold these laws in higher and higher esteem to the ratio of contempt for them and the constant violation of their terms by the railways. This conflict between the railways and the interstate-commerce enactment has well-nigh exhausted the patience of the people and those who are appointed to execute its provisions.

That the law itself has demonstrated that it needs some changes to make it more applicable to present needs none will deny. The public demands at the hands of Congress some radical improvements. What we need, in reference to the Interstate Commerce Commission, is that its powers shall be more definitely specified; that it shall have greater powers to enforce its orders. We need an interstate-commerce law, and that the powers of its Commission be defined. I believe there is but one way to maintain reasonable, fair, and just rates, and that is by giving the railways the right to establish a rate and then go to the Commission and have that rate indorsed; publish the rate and live up to it. In a word, be honest. Heretofore Congress has seemed slow and apparently indifferent, but we believe needed changes in the law will be obtained and justice be done to all.

The CHAIRMAN. Let me revert to that subject which you were speaking of a while ago. Suppose the stockholders of the different carrying corporations turn over their powers to the board of directors; they in their turn turn over their powers to the general manager; the general manager abdicates in favor of the traffic manager; the traffic manager turns over the subject to the solicitors, to the rate solicitors, and they are the men who primarily make these illegal arrangements.

Mr. LYON. You mean the subagents?

The CHAIRMAN. Yes, sir.

Mr. LYON. No, sir; I do not believe that. I do not believe there was ever an agent on the line who voluntarily made a rate contrary to the powers over him. That is my experience in railroad matters, in shipping matters.

The CHAIRMAN. At all events, these gentlemen who have this in charge have upon them the duty of securing returns that will pay dividends on the stock.



Mr. LYON. I hope so.

The CHAIRMAN. Now, it is your opinion that if large fines against the corporations should be levied——

Mr. LYON. Yes, sir; for each offense.

The CHAIRMAN (continuing). So that these possible dividends would be diminished——

Mr. LYON. No, sir.

The CHAIRMAN (continuing). That then the stockholders would have an interest——

Mr. LYON. No, sir; I think the whole business would stop if they had a few fines to pay.

The CHAIRMAN. The stockholders would be the men who would be hurt?

Mr. LYON. Yes, sir.

The CHAIRMAN. Through the payment of these fines?

Mr. LYON. No, no; they would not pay the fines.

The CHAIRMAN. They would pay them until they learned the lesson.

Mr. LYON. That would be a very short time. If you would put a sufficient fine on every car that went through from Chicago to New York on a cut rate, one offense would end it.

The CHAIRMAN. That would be enough?

Mr. LYON. Yes, sir.

The CHAIRMAN. I am inclined to think you are right.

Mr. FLETCHER. What has been the rate on Chicago in the last year?

Mr. LYON. On wheat?

Mr. FLETCHER. Yes, sir.

Mr. LYON. We do not handle the wheat that they do in Duluth. We do not handle so much as they do in Duluth.

Mr. FLETCHER. Take all the grain in that way, and how much is the grain they handle there?

Mr. LYON. I can't tell you that. There are books here on file which show it.

The CHAIRMAN. I want to get your idea a little further about this diversion. Do you regard the shipments through Duluth as a diversion from Chicago—the natural channel?

Mr. LYON. No, sir; the Lake route is a natural channel.

The CHAIRMAN. Is the use of the Mississippi to New Orleans a diversion from natural channels?

Mr. LYON. I think not. Yes; it might be if it reached into the State of Illinois. I assume that. There is a lot of territory there that might ship to Chicago or the other way, which is just on the dividing line; but there is a point called Monmouth Junction, just near Burlington, where we have a lot of stuff billed to the Mississippi River, and then it goes to New York by Monmouth Junction. That is one of the places. I do not remember the other point.

The CHAIRMAN. Trace out the course of that route. Where does it generally go? What is its route to the seaboard?

Mr. LYON. It would be by the way of Monmouth Junction and Burlington to the Chesapeake and Ohio. I do not remember the route. It goes to Newport News and Baltimore.

The CHAIRMAN. It avoids Chicago.

Mr. LYON. Yes, sir; a gentleman said to me the other day that "it does not make any difference what rate of freight I have I am always afraid that the man next to me has a better rate than I have."

## STATEMENT OF MR. T. W. TOMLINSON.

Mr. TOMLINSON. I am the railway representative of the Chicago Live Stock Exchange, whom I represent before your honorable body.

The live stock exchange last week considered the Corliss bill and directed me to come on here and express their views. I might also add that the Cattle Raisers' Association of Texas, with headquarters at Fort Worth, Tex., at its last annual meeting also had under consideration the so-called Corliss bill and adopted resolutions indorsing it, which mention that bill, and which are of course the best evidence that the bill was before them. I present these to you.

RESOLUTION UNANIMOUSLY ADOPTED BY THE CATTLE RAISERS' ASSOCIATION OF TEXAS AT ITS ANNUAL MEETING HELD AT FORT WORTH, TEX., MARCH 12, 1902.

Whereas the operations of the Interstate Commerce Commission under the present law are absolutely worthless, for the reason that they have no power to enforce their decisions; and

Whereas there has been introduced in the House of Representatives of the Fifty-seventh Congress, by Congressman J. B. Corliss, of Michigan, a bill amending the interstate-commerce act, correcting the evils, and giving the Commission power to enforce its rulings, which has the unqualified indorsement of the Interstate Commerce Commission and shippers at large throughout the country; and

Whereas the live-stock interests of the United States are heavy shippers and therefore interested in anything pertaining to governing transportation: Therefore, be it

*Resolved*, That the Cattle Raisers' Association of Texas urge the members of Congress to vote for the passage of this amendment to the interstate-commerce act, and be it further

*Resolved*, That the secretary of this association is hereby instructed to send certified copies of this resolution to the Committee on Interstate Commerce of the House, and also to write personal letters to the members of Congress and Senators from Texas urging work for the passage of this measure.

---

NATIONAL LIVE STOCK ASSOCIATION, DENVER, COLO.

The following memorial was unanimously adopted by the fifth annual convention of the National Live Stock Association, held in Chicago, Ill., December 3, 4, 5, 6, 1901: *To the honorable President, the Senate, and the House of Representatives of the United States:*

The National Live Stock Association respectfully represents that it is an organization composed of over 150 of the principal stock raisers, feeders' and breeders' organizations, live-stock exchanges, stock-yards companies, and various commercial organizations of the United States, whose names we append hereto; that it represents more than \$4,000,000,000 of invested capital, and that it was organized for the purpose of promoting the best interests of the live-stock industry of this country.

This association, in behalf of its constituency, earnestly urges upon Congress the great importance and increasing need of Federal legislation, which will give to the Interstate Commerce Commission adequate power to correct discrimination, remove preferences, abate unreasonable rates, and where necessary, to prescribe the maximum and minimum rates, making its decision effective pending any appeal to the courts.

When the present interstate-commerce law was enacted in 1887 it was at least popularly supposed, and we believe clearly intended, that it gave to the Interstate Commerce Commission, after due hearing and investigation, the power to say what was a reasonable or unreasonable rate and to enforce its decisions. Court decisions have since declared that the Interstate Commerce Commission does not have the power to fix rates for the future, either directly or by indirection. As substantially every complaint that has been, or would be, brought before the Commission involves the question of the reasonableness of rates, it can be readily seen that these court decisions practically wipe out the only real power the Commission was supposed to have, and limits its usefulness to the collection and promulgation of statistics.

While governmental control over railroad charges through the medium of the Interstate Commerce Commission has been gradually fading away, the general railroad situation has undergone portentous changes. Little independent carriers have been forced to the wall and absorbed by their larger competitors, which in turn have combined with or sold out to other larger competing systems, until to-day, by this centralization, the rail transportation facilities of this country are practically controlled by scarce half a dozen different interests. By these transitions, reorganizations, and combinations, added burdens have not only been placed upon the man who pays the freight by reason of increases in the fixed charges or indebtedness of the railroads, but his sole remaining safeguard by free competition has been virtually eliminated, so that the public, which now has greater need of intelligent and effective Federal supervision and regulation of railroad charges, has less protection to-day than previous to the enactment of the present interstate-commerce law.

The general and marked advance in rates during the past three years of unexampled prosperity to the railroads were apparently unnecessary and seemingly unwarranted upon any other theory than the intent of the railroads to exact all they could. The multiple economies of railroad operation, together with the enormous increase in the volume of the traffic, would seem to logically suggest a reduction instead of an advance. Their action, however, enables us to unmistakably forecast what they would do, unrestrained by Federal control, when by further consolidations or by other agencies competition becomes entirely stifled.

The members of the National Live Stock Association recognize that the railroads are powerful agencies of progress, and that more than any other factor they have contributed to the development of the country. The superb service they perform merits our commendation. We expect to pay the railroads the cost of the service they render, together with a reasonable profit on their investment; we do not want the service for any less, nor ought we to be compelled to pay more. We are not presuming to say what are or may be reasonable and fair rates, but we do emphatically protest against the railroads being the sole arbiters of their charges and exacting what they think the traffic will stand, or, in plainer language, all they can get.

If railroad rates are fair and reasonable the railroads should not fear any investigation of them by an impartial tribunal. The objections they make against the proper Federal supervision of rates by an expert commission confirms the suspicion that railroad rates need regulating.

Either the Government must assume at once an intelligent and comprehensive control over railroad charges or prepare for absolute ownership of the transportation facilities of this country.

For these, among many other patent reasons, the members of the National Live Stock Association respectfully request Congress to give early attention to this much-needed legislation, which has already been too long delayed.

Attest:

JOHN W. SPRINGER, *President*.  
CHAS. F. MARTIN, *Secretary*.

The CHAIRMAN. I might say to you here that these hearings are for the purpose of discussing all of the subjects that relate to transportation, and there is another one that members of the association connected with the Cattle Dealers' Association have some interest in, namely, that of increasing the number of hours that animals may be retained on cars. I simply mention this to say that if it is your pleasure at this time to discuss that it will be entirely proper to do so.

Mr. TOMLINSON. I thank you for your suggestion, and in line with that, when I have finished, I will be very much pleased to say what the live stock people feel in respect to that bill.

The National Live Stock Association, with headquarters at Denver, Colo., and which includes in its membership practically all the live stock organizations of this country, with a membership of about 120, have also, at different and numerous times, passed resolutions recommending to Congress the advisability and necessity of the proposed changes in this present interstate-commerce law, and I would like, with your permission, to file as a part of my remarks the resolutions of both the National Live Stock Association and of the Cattle Raisers' Association. Cojointly with Judge Springer I am directed to represent the National

Live Stock Association in addition to my representation of the Chicago Live Stock Exchange and the Cattle Raisers' Association and the National Live Stock Exchange.

These organizations practically cover the entire live stock interests of the country. The Live Stock Exchange was a participant in the interstate law convention, held a short time ago, which framed the present Corliss bill, in a measure, and we feel it due to ourselves and your committee and to the public and to the railroads, that we come here and at least express our views upon this bill.

The live stock industry supplies a very great traffic for the railroads. On some Western railroads it is as high as 12 per cent, averaging perhaps a little under that. When you consider the vast number of other articles incidental to the operations of the packing houses you will see what a great volume of traffic really arises from the live stock industry.

This industry is interested not only in the relative equality of rates, but is deeply interested in their inherent reasonableness. We do not want our traffic transported at anything less than the cost of the service together with a fair added profit, and we also wish other classes of freight handled on the same basis. We protest against discriminations, and preferences, and against the carriage of some freight at less than the cost of service, thus placing added burdens on other articles. We believe that such is the wish of your committee.

The CHAIRMAN. Will it embarrass you at all to ask you questions?

Mr. TOMLINSON. Not in the slightest. I will probably make a very poor attempt at answering them, but I shall try.

The CHAIRMAN. You have made reference to articles that are carried below cost?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. Give this committee some illustration of that. Let me say to you—you are a practical man, I think—that we have our own theories with regard to general legislation, but we have not the practical knowledge that you have. Now, what we want to get at is what you can give us—illustrations of the case that you have generally referred to.

Mr. TOMLINSON. I believe the railroads continually say their export rates on grain are too low.

As to the rates that come particularly under my observation, I might say that the present rates on fresh meat, say from some of the Western markets to the Mississippi River, or to their eastern junction, via Chicago, are too low. Take, for instance, the through rates on fresh meats from St. Paul, through to the seaboard, or to the Eastern points. The proportion accruing west of Chicago is  $13\frac{1}{2}$  cents per 100 pounds, with a minimum of 20,000 pounds per car, or \$27 per car. The live-stock rate is twice that. Now one of those is wrong.

Mr. MANN. You say the rate on dressed beef is too low. What is the rate on dressed beef from Chicago to New York, now?

Mr. TOMLINSON. Forty cents.

Mr. MANN. Is that less than cost?

Mr. TOMLINSON. No, sir.

Mr. MANN. That is undoubtedly above the cost?

Mr. TOMLINSON. I think it is, probably, about a fair rate.

Mr. MANN. I am not speaking about whether it is a fair rate, but the cost. Is it not above the cost?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. Forty cents a hundred. Certainly that ought to be above the cost, if they can afford to carry grain for 13 cents.

Mr. TOMLINSON. Yes, sir; that is above cost.

Mr. MANN. Then that is not an illustration of a commodity carried below cost?

Mr. TOMLINSON. You did not understand my statement. I used as an illustration the rate on fresh meat from St. Paul through to the seaboard.

The CHAIRMAN. That is 27 cents?

Mr. TOMLINSON. No. Out of the through rate from St. Paul to the seaboard the line west of Chicago gets  $13\frac{1}{2}$  cents. That is, for their haul to Chicago they get  $13\frac{1}{2}$  cents on 20,000 pounds, netting them \$27 a car.

The CHAIRMAN. From Minneapolis or St. Paul to Chicago?

Mr. TOMLINSON. Yes, sir. Now, I say I think that is too low.

Mr. RICHARDSON. On through freight?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. What is it on grain for the same haul?

Mr. TOMLINSON. I could not tell you that.

Mr. MANN. What would it be on the same amount of live stock?

Mr. TOMLINSON. Twenty-seven cents.

Mr. MANN. That is not a comparison of rates.

Mr. TOMLINSON. The honorable chairman asked me a question, and I answered it.

Mr. MANN. I asked for rate that you thought was less than cost.

Mr. TOMLINSON. I think that is less than cost.

Mr. CORLISS. Do you know of any rebates on beef shipments?

Mr. TOMLINSON. Personally, I know of them only through reading the testimony of the railroads before the Interstate Commerce Commission at the last hearing regarding the rates on packing-house products and fresh meats in Chicago. That was published in a rather voluminous document, and I think all the roads admitted that they had been and were then paying rebates on shipments of fresh meats and packing-house products.

Mr. RICHARDSON. How do you explain the difference? Why is it that a railroad makes that difference between live stock and the beef which you have been talking about? I would like to understand why they make those differences and what influences them.

Mr. TOMLINSON. I think all railroads will agree with me that fresh meat ought to be charged higher than live stock and that what are known as packing-house products should take about the same rate as live stock. The Interstate Commerce Commission in 1890 considered a case which was known as the case of *The Chicago Board of Trade v. Various Western Railroads*, wherein the question involved was the relative rates on hogs and hog products from the Missouri River and intermediate points in Iowa compared with the rates on hogs. The Commission decided that the rate on products should not be greater than upon the live animal.

Another decision of the Commission, rendered about a year afterwards, in the case of *John P. Squire & Co. v. The Michigan Central Railroad*, involved the same point, except that it related to live cattle as compared with fresh meats, Mr. Squire alleging that the rates on the live article were too high compared with the rates on the fresh-

killed product. The decision of the Commission in that case was to the effect that they thought the rates on the fresh meats should be about 50 per cent higher than on the live cattle—on the live article. Those two decisions have not been observed. They are not observed to-day west of Chicago. East of Chicago they are well observed, I may say.

Mr. RICHARDSON. That is east of Chicago.

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. That is where they only get 13 cents, you say?

Mr. TOMLINSON. No, no. West of Chicago is where they get 13 cents as their proportion of the rates. The railroads recently reduced the fresh-meat rates from the Missouri River to Chicago, and the Mississippi River about 5 cents per 100 pounds.

Mr. RICHARDSON. How do you propose to amend the present interstate-commerce law to remedy this?

Mr. TOMLINSON. I think the most satisfactory remedy for cut rates would be to give the Interstate Commerce Commission reasonable power over rates. For example, if, when the Commission were absolutely certain that fresh-meat rates, or packing-house rates, were being cut from any market, they had the authority to order down the rates on live stock, there would not be any cut rates on the product.

Mr. FLETCHER. Will you please tell us why there should be 50 per cent more for carrying fresh-meat products than on live stock?

Mr. TOMLINSON. Well, fresh meat requires first a heavier car. You have to haul free a large quantity of ice; the service must be first class. And the mileage on refrigerator cars which are owned by the packers is a very heavy one. And finally, the value of the article is more than that of the live products.

A MEMBER. Does not the shipper furnish the ice?

Mr. TOMLINSON. Yes; but the railroad has to haul it, is what I say.

Mr. COOMBS. I should think that you could haul so much more that the rates would equalize.

Mr. TOMLINSON. But they haul less. A car of fresh meat rarely loads over 20,000 pounds, while live stock has a minimum weight of 22,000 pounds.

Mr. COOMBS. Why is that?

Mr. TOMLINSON. They can only load that much in a car.

Mr. COOMBS. I do not understand. Why do they haul less of fresh meat than of live stock?

Mr. TOMLINSON. Because they can not load any more. It is hung up in the cars on hooks, and you can not get much more than 20,000 pounds in a car.

Mr. COOMBS. I see. They do not pack it in?

Mr. TOMLINSON. No, sir.

Mr. RICHARDSON. I have not got your idea about the remedy. If I understand, the authority of the railroad commission at the present time is simply advisory?

Mr. TOMLINSON. Yes, sir; perhaps it goes to that extent.

Mr. RICHARDSON. It is merely a suggestion, and then an appeal can be taken by the railroad to the Federal court?

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. And there the question is passed on?

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. Now, instead of making the power of the Inter-

state Commerce Commission advisory merely, you want to make it arbitrary and have them enforce it right away—at once?

Mr. TOMLINSON. No, sir; I do not go quite that far.

Mr. RICHARDSON. That is what I want to get at—your views on that question.

Mr. TOMLINSON. I think the provisions of the Corliss bill providing for a twenty and thirty day stay of the order pending the——

Mr. RICHARDSON. A twenty-day stay.

Mr. TOMLINSON (continuing). Yes, sir; that is fair and reasonable to both parties in interest.

Mr. RICHARDSON. Then, all that you ask is that there shall not be any discrimination?

Mr. TOMLINSON. Yes, sir.

Mr. RICHARDSON. Do you not think that you are making a discrimination in that kind of way of making an arbitrary rule that the judgments of that Interstate Commerce Commission shall be enforced, and after they are enforced the railroad companies shall have an appeal; and do you not think if the higher court should happen to determine that the Interstate Commerce Commission was wrong, that its verdict was wrong in fixing the rate, that that would be a discrimination?

Mr. TOMLINSON. I do not.

Mr. RICHARDSON. You do not? Is there any such rule in any other court that has ever been established in a civilized country?

Mr. TOMLINSON. I beg the question with you on that. I am not a lawyer.

Mr. CORLISS. This is such a case as would occur in a patent case, where a preliminary injunction is obtained and then set aside, which repeatedly occurs.

Mr. TOMLINSON. As a point of equity I can not conceive what objection there is to it. It seems to me that it is entirely fair.

Mr. ADAMSON. If a man was under sentence to be hung, and took an appeal, the appeal would not do him much good after he was hung?

Mr. TOMLINSON. That is an exaggerated case.

Mr. ADAMSON. It may be an exaggerated case, but it illustrates the principle.

Mr. RICHARDSON. Your presumption is that the action of the Interstate Commerce Commission is presumptively right.

Mr. TOMLINSON. If we can not rely on a Commission of that kind, I do not know what we ought to expect from anyone, either the courts or Congress, for that matter.

The CHAIRMAN. Do you know of any other commission that was ever created to which such an extraordinary and immense power was given as has been proposed here?

Mr. TOMLINSON. I think all the State railroad commissions.

The CHAIRMAN. The railroad interests of the United States represent possibly ten billions of dollars. The value of that railroad property is dependent upon its earning capacity.

Its earning capacity must be dependent upon the rates it charges. Now, where has any like power to this ever been conferred upon three men; that is, if you have any illustration to give us?

Mr. TOMLINSON. I do not wish to be understood as saying that I believe that the Commission ought primarily to make rates. I do not. It should only be done upon proper complaint and after investigation.

As to your question, I have always understood that the State railroad commissions have that power.

Mr. RICHARDSON. The State railroad commissions?

Mr. TOMLINSON. I think our Illinois commission pretty nearly has that power.

Mr. ADAMSON. You do not mean that it has power that if the decree goes into operation, notwithstanding other litigation——

Mr. TOMLINSON. I do not know that I quite understand you.

The CHAIRMAN. The point that we make is that all other courts which have similar power have it with this incident, that if a party be desirous to appeal you shall not put a judgment into execution but once, but have it await the final judgment on appeal. Do you say that your State commission has power to fix rates that go into effect immediately, although an appeal is taken, or does the judgment stand suspended until the appeal is determined?

Mr. TOMLINSON. I could not answer you on that point. I will reserve my reply until I can look into the matter further.

Mr. MANN. You stated your opinion on the question as far as the Illinois commission is concerned. I think there is no appeal from the railroad and warehouse commissioners there.

Mr. TOMLINSON. Yes, sir.

Mr. MANN. But any railroad can enjoin in any action, without question, in any court.

Mr. COOMBS. Take the railroad commission of California; it is created by the organic law, by the constitution of the State itself. It is vested with judicial powers. It is not provided that any appeal shall lie upon its adjudication. However, courts can review the determination of the commission, can enjoin the commission, or can treat it like any other body that has purely administrative powers.

Mr. TOMLINSON. So far as the present bill is concerned, I think it is perfectly fair in its provisions regarding an appeal. The court, if I understand the bill properly, is granted the privilege of staying the order, or suspending the order of the Commission, if any error appears in it. That is equivalent to saying that if they do not rescind the order, the two, the court and the Commission, have passed upon it and think it fair. It seems to me that it having gone that far there is no good reason why it should not go into effect.

You must understand, gentlemen, that a great many people who may not be exactly directly interested in any particular rate, yet are vitally affected by it, and if an order of the Commission would have to be held in abeyance until the final decision of the Supreme Court a vast number of people who have absolutely no redress at law will be seriously injured by it.

Mr. MANN. Is not every interest in this country held in abeyance in exactly that way? Can you name any interest in this country that is not held in that way, subject to the right of every man to take an appeal and go to a higher court?

Mr. TOMLINSON. That is true; yes, sir; but the transportation facilities of our country are of such a nature that they require different treatment. Otherwise, you will get no satisfaction at all.

Mr. MANN. If I understand, your special complaint is that dressed meats are given too low a freight rate in comparison with live stock?

Mr. TOMLINSON. Pardon me, Mr. Mann; I came here not with a view of injecting anything regarding fresh-meat rates into my testi-



mony. Your honorable chairman simply asked me about it, and I cited him one instance where I thought the rate was too low.

Mr. MANN. What is the special complaint of the live-stock board or the live-stock men?

Mr. TOMLINSON. Our plea is for fair, reasonable, and stable rates.

Mr. MANN. Everyone wants that; but what is the special complaint of the live-stock people at Chicago, or elsewhere?

Mr. SHACKLEFORD. Is it a discrimination that you complain against?

Mr. TOMLINSON. No, sir. We want the law amended so that the Interstate Commerce Commission will have the power to investigate and see what rates are reasonable and just, and we want more legal effect given to their decisions.

Mr. MANN. I know; but we are trying to ascertain what the complaints of the shippers and other people are.

Mr. TOMLINSON. I can cite several instances, if you wish me to.

Mr. MANN. Generally, if you please.

Mr. TOMLINSON. Do you wish me to cite an instance of where we think we have a grievance?

Mr. MANN. If it does not take up too much time.

Mr. RICHARDSON. Not a single instance, but the general principle. Where is the complaint?

Mr. SHACKLEFORD. Give us an instance which would illustrate the general complaint.

Mr. TOMLINSON. I will give you an instance first of the operation of the present law, so far as the enforcement of an order of the Commission is concerned. The Interstate Commerce Commission rendered a decision in a cause known as the "Two Dollar Terminal Case." After that decision was made, an order was issued; the railroads appealed from that order, or applied for a rehearing, which is granted, and that resulted in a stay of the order. After rehearing the Commission reaffirmed its previous decision and put the order into effect at a date about a month later. The railroads ignored that order; we had to go into the courts and endeavor to enforce it; we went into the courts, but before we got a decision it was fourteen months after the order of the Commission was rendered. We had exercised every reasonable precaution to hurry this case along, and that was the best that we could do.

Judging from that, it is pretty safe to say——

Mr. MANN. You ought not to stop there; you ought to say that the court decided against you.

Mr. TOMLINSON. Yes, sir; but that makes no difference. I am simply referring to the delay in getting a decision from the court.

Mr. MANN. That decision you speak of involved a large amount of money to the railroads?

Mr. TOMLINSON. Yes, sir; and it is now pending in the Supreme Court.

Mr. MANN. It is pending in the Supreme Court, and it was decided against you in the court of appeals.

Mr. TOMLINSON. Yes, sir; with a divided court.

Mr. MANN. And yet you think that the railroad companies ought to have been deprived of that money pending the decision of the court, which was against your contention?

Mr. TOMLINSON. No, sir; I do not. I cited that to show this: That it was about fourteen months under the present method of procedure

before you could get any action from the courts, regardless of what the action of the court was. But, under this present bill, fifty days is the limit within which you must at least secure from the courts some announcement as to the legality of the decision of the Commission.

Mr. MANN. Just take that case. The railroad companies or the stock-yards companies, I do not know which it is, had always charged \$2 a car for terminal shipping freight. Now, you wished to eliminate that charge. The Interstate Commerce Commission decided in your favor. The courts, as far as they have gotten, have decided against you?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. And yet you think before the court had a chance to decide it that the change ought to have been made, and the railroad companies should have been deprived of that money, although the courts afterwards decided, and the Supreme Court of the United States may decide, that they were entitled to it? Do you not think that is a rather hasty action, taking a man's property, if he is entitled to it, before he has a chance to have a decision by the court?

Mr. TOMLINSON. I think this fifty days would have given any court ample time to have decided that case.

Mr. MANN. Well, of course, on that point the board had the same opportunity to decide within fifty days—and, by the way, there is no fifty-day provision in this bill—it had it before just as it would if this bill became a law.

Mr. TOMLINSON. They have to say within fifty days whether the order shall go in effect.

Mr. MANN. Is there a thirty-day provision in the bill?

Mr. TOMLINSON. Twenty days and thirty days.

Mr. MANN. And if the court says plainly that there is an error of law, or plainly that there is a misunderstanding or an error of fact, then the court shall give a stop order; but that must be a plain opinion on the court's part.

That is not an illustration of your complaint against the present system of the railroads. What is the general complaint of the stock-yards people or the live-stock people now as to their treatment by the railroads?

Mr. TOMLINSON. Well, I might cite that the present complaint is that the rates on live stock from Western points is relatively too high compared with the rates on the products. That is one incident.

Mr. MANN. You mean compared with the rates on meat products?

Mr. TOMLINSON. From the West; yes, sir.

Mr. MANN. Now, the railroad companies have given a good deal of attention to that subject, I suppose. They are endeavoring to make money and to foster business along their lines?

Mr. TOMLINSON. Yes, sir.

Mr. MANN. Do you think that the Interstate Commerce Commission, after a short hearing on the complaint, ought to be permitted to decide that question, on the theory that they know more about it than all the railroad officials combined through all the years have learned?

Mr. TOMLINSON. That is upon the assumption that the rates are made by the railroads upon careful consideration, which is not a correct premise to start upon.

Mr. MANN. I expect that is true.

Mr. TOMLINSON. I think any disinterested party, the Interstate

Commerce Commission, or the court, or this committee, is much more competent to make these railroad rates, after a thorough investigation, than are the railroads when they are influenced by competition and by selfish motives of one kind or another.

The CHAIRMAN. I do not know that we could do that if all the gentlemen who come before us are as chary about giving us information as those have been who have come before us so far.

Mr. TOMLINSON. I trust that you will not apply that to me.

The CHAIRMAN. We have had no specific information since this investigation began. A great many generalities are indulged in, but when we ask for specific instances we do not get them.

Mr. TOMLINSON. I will go on with a few other instances.

The CHAIRMAN. Now, we want to know the actual operation of this law and the conduct of the people under it. Now, if you will give us that information, any of you gentlemen, we will be very glad. Do not be at all alarmed about taking up our time.

Mr. TOMLINSON. The Cattle Raisers' Association of Texas about two years ago, after the rates from Texas on live stock had been advanced about 5 cents a hundred, arranged for a conference with all the railroads leading from Texas with a view of showing that the advance was unreasonable and unwarranted and unjust and having it withdrawn. They met with all the railroads in St. Louis, and from what the railroads said at and shortly after this conference they led the representatives of the Cattle Raisers' Association to believe that there was great merit in their complaint and that the rate would undoubtedly be put back to the old basis. About a month afterwards the Cattle Raisers' Association was informed, through the secretary of the Southwestern Traffic Association, that after due consideration they did not think the rates were unfair and they would not make any change.

The CHAIRMAN. What was the old rate?

Mr. TOMLINSON. Forty-four and three-fourths cents. Now, I just mention that as one incident. The rate from Fort Worth to Chicago was 44 $\frac{3}{4}$  cents, and it was advanced to 49 $\frac{3}{4}$  cents. Of course, all rates differ down in that country, but that rate covers as a sort of a blanket rate all of the northwestern part of Texas.

Just at the time that the railroads announced that they would not grant any reduction every large cattleman in Texas had a cut rate, in no instance more than, and in many instances less than, the advance that had been made. In other words, they cut the rate from \$10 to \$15 a car right after an advance.

The only people who did not get that rate——

The CHAIRMAN. That was a secret cut?

Mr. TOMLINSON. A secret cut. The only people who did not get that rate were the small shippers.

The CHAIRMAN. Is there anything in this bill that will correct that?

Mr. TOMLINSON. I think it would go a long ways toward doing it.

Mr. MANN. Fixing the rate would not do it?

Mr. TOMLINSON. Yes, sir; if the railroads are able to pay to these large shippers such an immense amount of rebates, I believe they are able to haul the small shippers' freight on that basis. If the Commission would so order the rates to be fixed, I believe the shipper would have protection.

Mr. MANN. Your theory is that every time the railroads cut a rate

the Interstate Commerce Commission ought to reduce the scheduled rate to the cut rate?

Mr. TOMLINSON. I think there would be no more cut rates, and I think the position is absolutely sound, for precisely the same reason that Mr. Lyon stated. If you fined the railroads there would not be any more cut rates. If the Commission had the power, when the railroads put in these secret cut rates, to say what the rate should be on any other classes of traffic that were discriminated against and subjected to an undue prejudice—

The CHAIRMAN. You think this cutting of rates has been going on probably ever since the enactment of the law?

Mr. TOMLINSON. No doubt, and long before.

The CHAIRMAN. But the discovery of them was in the proceedings in Chicago quite recently, was it not?

Mr. TOMLINSON. Well, it has been current knowledge with, I think, everybody who has been at all in touch with the rate situation, for a long time. It has only been given current publicity in this last investigation—

The CHAIRMAN. People have had a sort of inchoate belief that this was going on?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. And has there been any public knowledge of it that could be used in courts as evidence?

Mr. TOMLINSON. There have been a number of times when the public tariffs have been reduced down to a basis considerably less than the one previously in effect, and then there has been a reinstatement shortly afterwards.

The CHAIRMAN. What would that prove?

Mr. TOMLINSON. It would prove that the railroads got into a fight among themselves, and—

The CHAIRMAN. What would it prove on this question of cut rates or secret rates being given to individuals?

Mr. TOMLINSON. It would prove conclusively to my mind that there had been cut rates, and that this was the result of it, that this published low rate was the result of it.

Mr. COOMBS. You think the producers of wheat, the wheat raisers, will agree with you in the position that you take in reference to that question?

Mr. TOMLINSON. The wheat men?

Mr. COOMBS. The wheat men; the producer; the farmer himself?

Mr. TOMLINSON. I do not believe I quite catch your question.

Mr. COOMBS. In your position about cut rates, do you think the producer, the wheat raiser, is in accord with your views?

Mr. TOMLINSON. The live-stock man is. I will not speak for the wheat man.

Mr. COOMBS. Now, of course, the reason I ask is that I like to get the views of everybody and of every interest. The wheat-raising interest is a considerable interest in this country.

Mr. TOMLINSON. Yes, sir.

Mr. COOMBS. And they need the advantages that they naturally get, as a rule.

Mr. SHACKLEFORD. Would the same advantages be beneficial to any other industry?

Mr. COOMBS. I am speaking now of the wheat industry; do you think you can speak for them?

Mr. TOMLINSON. I would not assume to speak for them as long as they have other and abler representatives. I speak simply for the live-stock people.

The CHAIRMAN. The time for adjournment has arrived, and if you will resume to-morrow at half past 10, we will be glad to have you do so.

Mr. TOMLINSON. I will be very pleased to.

Thereupon, at 11.45 a. m., the committee adjourned until to-morrow, Tuesday, April 15, at 10.30 o'clock a. m.

---

TUESDAY, *April 15, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Mr. Tomlinson will you proceed?

#### STATEMENT OF MR. T. W. TOMLINSON—Continued.

Mr. TOMLINSON. At the conclusion of my remarks yesterday, I was talking about violations of the act, and at the same time it seems eminently proper that I should file with this committee for information, but not to appear as a matter of record, the testimony in the matter of the transportation of dressed meats and packing-house products taken at a hearing of the Interstate Commerce Commission in Chicago in March, 1901.

The CHAIRMAN. Let me say, Mr. Tomlinson, that that is not satisfactory to the committee. That is accessible to us as it is to you. You come here and make charges against the operations of the law. Now, we want to know from you what you know.

Mr. TOMLINSON. My purpose in filing this was simply to show violations of the act, and in support of what I have already stated.

The CHAIRMAN. Yes. That, of course, we could obtain without troubling you for it.

Mr. TOMLINSON. I thought that I was perhaps serving the convenience of the committee.

The CHAIRMAN. We are grateful for that, of course, so far as it goes. Now, if you have any knowledge, we would like to know it; or, if you have not any knowledge, of course, you can say so.

Mr. TOMLINSON. I have knowledge to this extent. The rates on fresh meats and packing-house products are continually cut from the West through to the seaboard.

The CHAIRMAN. How do you know that?

Mr. TOMLINSON. Because I have heard the admissions of the railroads before the Interstate Commerce Commission.

The CHAIRMAN. Which railroads?

Mr. TOMLINSON. Every one of them.

The CHAIRMAN. Who was speaking for them?

Mr. TOMLINSON. The traffic managers.

The CHAIRMAN. Will you give us their names?

Mr. TOMLINSON. Paul Morton of the Santa Fe, Mr. J. M. Johnson

of the Rock Island, Mr. T. T. Storer of the Great Western, Mr. Holland, I think, of the St. Paul, Mr. Thomas Miller of the C. B. and Q., Mr. Drias Miller, who is in charge of the traffic of the reorganized Burlington system, and several others.

The CHAIRMAN. Now, commencing with Mr. Paul Morton, what admissions did you hear him make?

Mr. TOMLINSON. I heard him say that the Santa Fe was unable to get what they considered was their fair share of the fresh meat and packing-house products out of St. Joe and Kansas City, and on that account they were compelled to make a secret contract with one large shipper at 5 cents less than what was then the published tariff.

The CHAIRMAN. Who was that shipper?

Mr. TOMLINSON. Schwarzchild and Sulzburger.

The CHAIRMAN. When was that contract made?

Mr. TOMLINSON. Some time in June of last year.

The CHAIRMAN. How long did it endure?

Mr. TOMLINSON. Until June 1, 1902.

The CHAIRMAN. Under that contract what sums were paid to the other party?

Mr. TOMLINSON. I can not tell the exact sums.

The CHAIRMAN. Can you approximate it?

Mr. TOMLINSON. I believe Mr. Morton said in effect that it mounted into the hundreds of thousands of dollars.

The CHAIRMAN. Who was the next gentleman that you named?

Mr. TOMLINSON. I think the Rock Island shipper, Mr. J. M. Johnson.

The CHAIRMAN. What did you hear Mr. Johnson admit in this direction?

Mr. TOMLINSON. He admitted that it was necessary to meet the Santa Fe secret rate, which they did by rebates, or by vouchers, whichever way you care to put it.

The CHAIRMAN. To whom was that rebate given, did you hear him say?

Mr. TOMLINSON. It was generally given to the various traffic people representing the packing concerns.

The CHAIRMAN. All of them alike?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. Did he state what those rebates amounted to in their aggregate which had been paid?

Mr. TOMLINSON. I believe he did not state exactly, but left the impression on my mind, at least, that it amounted to a vast sum of money, as did all the other gentlemen who appeared before that Commission.

The CHAIRMAN. They all made substantially the same confession?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. With regard to the operation of their roads?

Mr. TOMLINSON. Yes, sir.

The CHAIRMAN. And the violation of this statute?

Mr. TOMLINSON. Yes, sir. My purpose, Mr. Chairman, in referring to that is this, the existence of these low-product rates to the river markets, as against what we consider high rates on live stock from intermediate points in Iowa and Missouri, works seriously to the detriment and the prejudice of the live-stock men located, for example, in Iowa. It puts the live stock which may be raised upon ground less valuable than is the territory east of the Missouri River in direct

competition with that stock which is raised upon ground perhaps—undoubtedly—more valuable.

And in that respect I would like further to say that the operation of these rates is not only a serious disadvantage to the live stock people in Iowa, Missouri, or Minnesota, but it is also a decided prejudice to the people who operate at Chicago. With that in view I have filed a formal complaint before the Interstate Commerce Commission, asking for an investigation of the entire situation relative to the rates on live stock and on these products, and have asked them to enforce the orders rendered some ten years ago. In filing this complaint before the Commission we are aware fully that the Commission has no power to fix rates.

We are further aware, even though we got an order from the Commission directing the roads to cease and desist to certain of their practices which may be found to be unlawful, that there would be little benefit to accrue to the interests which I represent from their decision if favorable to us, and I would like to ask you if you gentlemen can suggest to us any remedy we can pursue under the present law or through the courts that will enable us to get what we consider fair and reasonable rates? We know of none except through the Commission, which can not fix a rate. The courts have not the power to fix the rates, it being a legislative function. If we get an order from the Commission it may be two years before we can enforce it. By that time the situation may be changed, changed materially. The people who are hurt have no remedy. The people who are injured frequently, generally, are not the people who pay the rate.

In summarizing the views of the live stock industry upon the proposed bill, I might briefly say that we believe legislation ought to go further than this proposed bill. We are not willing to give our assent to anything less. I have heard it said and I believe there is a bill before the Senate which permits pooling. While pooling might result in more stable rates, while it might prohibit rebates and discriminations and undue preferences, and while it might help some small middlemen who at present suffer by reason of not getting the rates accorded to their larger competitors, while it might aid certain individuals who had suffered from certain prejudices, yet the live stock industry is not prepared to indorse the pooling feature, and our reason is this: The railroads desire a pool or a pooling privilege; for what? We do not think it is from any charitable motive, to prevent discriminations, or to correct undue prejudices. It is from the very selfish motive that it would give them more revenue. We can not consent to the granting to the railroads of any machinery which will give them the power to extract any more money from either the producer or the consumer for the service they render. We believe that the railroads are to-day earning fully all they are entitled to. If by reason of the pooling bill they might be able to get greater returns on some highly competitive traffic, we want some absolute assurance that other traffic will be handled for proportionately less.

At the hearing in Chicago on what is known as the community of interest plan, Mr. James J. Hill and Mr. Harriman stated in effect that the railroads could be relied upon to always charge reasonable rates; that the interests of the railroads in the country which they traversed was such that on a natural and proper amount of traffic reasonable rates were necessary, and therefore they drew the con-

clusion that the railroads would only charge reasonable rates. They ask us, in effect, to take their word for it. They do not believe each other, and yet they ask the public to believe them. Mr. Hill stated further that the Great Northern Company could not "with a good face" (those were his words) charge more than 7 per cent on its stock. It earns more than that.

What is to prevent the Great Northern or its affiliated interests from buying some other property at perhaps a ridiculously high price and then being compelled to earn on the Great Northern stock considerably more than 7 per cent.

Every tendency in the past five years has been to strengthen the condition of the railroads so far as their rates were concerned. Consolidation after consolidation has been made; fixed charges have been increased; competition has been almost eliminated. As a matter of fact, the necessity for a pool is past and over. The great railroad interests of the West are controlled by scarcely five people.

We do not feel that we can safely depend upon the confidence and generosity and fairness of these people to charge what is only fair and reasonable. We feel that the Commission should be put upon a plane much higher than it is to-day; that it should be given power far greater than is contemplated in this act. If we can not rely upon the Commission giving reasonable rates, I do not know why we should believe that the courts would do any better. No court, so far as I am advised, has ever decided that the decisions of the Commission were unreasonable. The Supreme Court of the United States, where it has reversed the Commission on any of its decisions, has not decided upon that point, but upon the point that they have not the power to make rates.

Yesterday the question was asked me as to whether any commission in any part of the country had as great a power as was asked for the Interstate Commerce Commission by the proposed Corliss bill. I have looked over many of the railroad laws of the different States, and I can not find any of them make any provision for review in the courts. There is a review, of course. There is a review should the commission attempt to enforce their order by penalty, but the roads could apply for an injunction in some United States courts, and on account, for example, of the rate being confiscatory.

The Illinois law, as Mr. Mann stated yesterday, does not make any provision for review. Of course, in a suit to enforce the penalty naturally the case would come up for review before the State courts. In a majority of the States the laws of which I have read there is no provision for any kind of review. There is this fundamental difference between the State railroad commissions and the Interstate Commerce Commission to-day: All the railroad commissions have power to primarily fix rates. The present interstate-commerce law does not give the power to the Interstate Commerce Commission to fix any rates. We do not ask for the privilege, for the power, to be given them to fix rates as a primary matter, but only upon investigation and after due hearing.

Once more referring to what we believe is very important, if any legislation is made by this present Congress, we feel that it should give more legal effect to the orders of the Commission. We can not support any bill that leaves indefinite for an indeterminate period the remedy which the Interstate Commerce Commission may seek to



give the public. Railroad rates to-day are higher than they have been for ten years. This is not a statement made unsupported. The absolute evidence is obtainable. While it may be said by the railroads that the rate per ton per mile has been decreasing, which is true in some instances, that does not mean that the rates are lower. It might mean, and it does mean, that a greater volume of low-class traffic moves on low rates than previously moved on the same rates.

The Department of Agriculture published recently—and I wish to refer to it in order that the committee may, if they so desire, examine it—a bulletin (No. 15, revised, miscellaneous series) which gives the changes in the rates charged for railway and other transportation services. It goes back as far as the records were obtainable and gives concisely the rates in effect upon various commodities. This amply supports what I have said.

The live-stock industry is vitally interested in this legislation. We feel there ought to be no question in according to the public what we think is reasonable, and our views are expressed in this bill, the Corliss bill.

I thank you very kindly for your attention. If there are any questions, I will be glad to answer them.

The CHAIRMAN. Before you take your seat, just a word more. You have said that this bill, in the power that it gave to the Commission, did not meet your views and those of your confrères, for the reason that it did not go far enough. Now, will you give us your opinion as to what should be done further than what is provided for in this bill?

Mr. TOMLINSON. I touched briefly on that yesterday when I said that the Commission ought to have absolute power over rates. In other words, without an investigation and without a hearing upon the case which might be in point—not, however, without due previous knowledge, acquired through their hearings or elsewhere—that the Commission might have the power to order down or up any rates which, by reason of some cut rates or rebate, might prove to be unreasonable. That would, more than any other thing, prevent these cut rates.

I said yesterday, in support of what Mr. Lyon said, that this was substantially equivalent to the fine provisions of the present bill. I think it is a little more potent.

The CHAIRMAN. What would be your idea of the permanency of the rate thus established, and what provisions would you make for alteration, if any?

Mr. TOMLINSON. I think that, as provided in the present bill, two years is a proper figure.

The CHAIRMAN. What would be your policy then—to allow the company to fix its own rate?

Mr. TOMLINSON. Certainly.

The CHAIRMAN. Or to go back to the disturbed rates?

Mr. TOMLINSON. To leave it entirely to the discretion and judgment of the railroad unless the Commission saw fit to make a subsequent order.

The CHAIRMAN. Now, would that involve, in your judgment, the necessity for exercising a power over classification?

Mr. TOMLINSON. I think so; yes, sir.

The CHAIRMAN. Would you favor a uniform classification for all portions of the United States?

Mr. TOMLINSON. I would hardly favor it. I might also say that the

interests which I represent are only slightly concerned in classification, but from a theoretical and practical standpoint I think there are no two sides to that question.

The CHAIRMAN. Well, of course you have given attention to the question of classification?

Mr. TOMLINSON. Yes, sir; practically all my life.

The CHAIRMAN. What would you do in reference to the foreign commerce and the through rate; how would you control that, or would you attempt to control it beyond the shippers?

Mr. TOMLINSON. Yes, sir; I think so. I think the export rates ought to be under the jurisdiction of the Commission. They are not to-day. Unless you have got some provision for the control of the export rate, it means that there are no domestic rates to the shipper. That may not be an unmitigated evil to the consumer or the producer.

The CHAIRMAN. What would you do with those roads that participate in our interstate commerce, and yet are beyond the jurisdiction of our courts?

Mr. TOMLINSON. You mean foreign roads?

The CHAIRMAN. Canadian roads—foreign roads.

Mr. TOMLINSON. I have not given the matter enough attention, Mr. Chairman, to talk intelligently on that thing. There have been a number of cases before the Commission, and I think the United States roads have been usually able to bring the Canadian roads to "time," if I may use that word. In such cases as have been before them they have carried their point. There is a comity of interest even between roads of foreign countries and this country that compels them to recognize certain rates among themselves.

Mr. CORLISS. I would like to ask you a question: Do you not think the present rebates and discriminations in rates are the greatest evil that now affects the business interests of our country?

Mr. TOMLINSON. I think they are; yes, sir. And I would like to add to that statement the further belief that in the future there will be more complaint against the inherent unreasonableness of rates than there will be against discriminations and preferences; this by reason of the consolidations and the multiple machineries that the railroads are adopting to regulate these rates. They will, I think, in time do away with the discriminations and undue preferences, but to-day that is the great evil.

Mr. CORLISS. If effective legislation was secured providing proper punishment in case of discriminations and rebates, do you not think that the traffic would be justly regulated thereby—the rate?

Mr. TOMLINSON. Do I not think that the result would be that the rates would be reasonable?

Mr. CORLISS. Yes.

Mr. TOMLINSON. I can not say—

Mr. CORLISS. And uniform?

Mr. TOMLINSON. It would be uniform, and that would be a decided advantage.

Mr. CORLISS. Well, with reference to different shippers, if all had to pay the same rate there would be no advantage to one over the other.

Mr. TOMLINSON. No. I say it would be a decided advantage to all concerned.

Mr. CORLISS. Do you not think there would be some danger in plac-

ing arbitrarily in one board of five men the power to arbitrarily fix rates?

Mr. TOMLINSON. I do not think so. In the past decisions of the Interstate Commerce Commission there have been no instances which have been declared unreasonable, which would lead me to believe that we can safely rely upon them. I do not know why we can not as safely rely upon them as upon the courts. It is incomprehensible to me, gentlemen, although I am a layman in this matter.

The CHAIRMAN. Has no method suggested itself to your mind whereby through simplifying methods by which a suitor could recover for excessive charges and by multiplying his damages that the same result could be accomplished as by giving this power to fix rates to the Commission?

Mr. TOMLINSON. I think not, sir, and for this reason that I have already stated; it is not the man who pays the freight who may be injured. It may be some consumer, some producer. It is unquestionably one or the other of those two gentlemen. They have no recourse. The middleman who pays the freight may have recourse, but not those men.

The CHAIRMAN. That will be upon the supposition that the members of the cattle raisers association did not ship their own products?

Mr. TOMLINSON. Yes sir.

The CHAIRMAN. But they do very frequently, do they not?

Mr. TOMLINSON. As far as the Texas Cattle Raisers' Association is concerned, they ship their own live stock generally. So far as the native live stock is concerned, and I might say fully 60, and perhaps 75 per cent of the receipts at any of the large markets, the stuff is bought by a buyer at the point of shipment and sent into the neighboring town.

It is not quite the same, as far as the live stock is concerned, as it is in the grain situation, but to the extent of the percentages that I have mentioned it is true. Take the State of Iowa. I suppose that 75 per cent of the live-stock shipments out of that State are purchased by buyers located at the different points. The farmer does not have any interest in it after he has sold the shipment to the buyer.

Mr. DAVIS. It affects his price; the price he gets for his cattle?

Mr. TOMLINSON. Decidedly.

Mr. DAVIS. He has it then; if it is indirect it is equally effective as if it was direct.

Mr. TOMLINSON. How is that?

Mr. DAVIS. The buyer in Texas calculates the amount of freight he has to pay when he pays the cattle man for his cattle, does he not?

Mr. TOMLINSON. You have lost the thread of the chairman's question. He asked me if the remedy for the recovery of unjust rate would not answer as well as the first law. I do not think any of these buyers would take into consideration the hypothetical point that they might recover from any reasonable rates on live stock.

Mr. DAVIS. I based my question upon the remark that you made in your reply, when you said that the cattleman, the man who sold the cattle to the buyer, had no interest in the freight rates.

Mr. MANN. No interest after the cattle were sold.

Mr. TOMLINSON. That was in connection with the previous remark, and should not be considered alone, sir.

The CHAIRMAN. A gentleman testifying here on a previous day

made the statement that the remedy of recovery was entirely elusive; that through the delay of the law, through the difficulties of court procedures and the expenses that wronged men who were deterred from bringing actions.

My question was suggested to you with a view of eliciting your opinion as to whether or not, if those difficulties of litigation were removed—for instance, if a commission—the commission—was instructed among its other duties to ascertain what the fair rate would be, and then some preference was given in regard to a hearing in cases of this kind with a provision for the recovery of counsel fees and multiple damages, if that would not be a safer remedy than the one of giving power to a small commission over this great interest.

Mr. TOMLINSON. No; I can not agree with you, Mr. Chairman, on that. I do not think so.

Mr. RICHARDSON. Why not?

Mr. TOMLINSON. For the reasons I have just stated.

The CHAIRMAN. Would not the certainty or the probability of speedy recovery, with the aids of the Commission and of counsel provided by the public, would that stimulate men who had been overcharged to ask proper recovery?

Mr. TOMLINSON. We think the essence of the act should be to procure for the public, for the consumer, just and reasonable rates, and as quickly as possible. We do not believe that a remedy such as you suggest would be at all adequate. It would be effective, no doubt, but it would not accomplish the purpose. The small shippers have no time to enter the courts. You doubtless know better than I do the difficulty of defeating the railroads in any kind of a case.

The CHAIRMAN. Well, I presume that one of the difficulties in litigation of this kind would be the difficulty of establishing on the part of a nonprofessional railroad man what was a just rate. I think that for myself I would have very little idea what a just rate was. But if there was a commission charged with the duty of studying that question and familiarizing itself with all the elements that constitute the cost of railway carriage I think that the matter would be infinitely simplified.

Mr. TOMLINSON. Yes, I think so; and I can see no reason, as I have already stated, after the Commission has done that, why it should not go into effect.

The CHAIRMAN. Then the Commission would simply go before a jury as any other witness—

Mr. ADAMSON. Do you think rates made by a commission would never be violated?

Mr. TOMLINSON. No, sir; I do not look for that ecstatic state of affairs.

Mr. ADAMSON. Would not litigation then, by reason—

Mr. TOMLINSON. I think I have repeatedly said that there would be less violations if the Commission was granted the power asked for in the present bill.

Mr. ADAMSON. How could there be less violations under one general blanket system of conditions than there are under the present conditions?

Mr. TOMLINSON. Because the Commission would then have the power to fix rates, and as they have not that power at present, and there

would be some legal effect given to their decisions, and there is not to-day.

Mr. ADAMSON. You do not expect the Commission to deal summarily with violations?

Mr. TOMLINSON. No, sir.

Mr. ADAMSON. Then the same courts would have to be resorted to?

Mr. TOMLINSON. It is put in a different position. It makes the duty of the railroads the affirmative duty of proving the order of the Commission unreasonable, and the complainant has to do that. To-day if we get an order of the Commission we have to go into the courts. Testimony of the Commission is not admissible before a court to-day. That is a startling statement, but it is nevertheless true.

Mr. ADAMSON. The chairman was suggesting a method of litigation—

Mr. TOMLINSON. The method was suggested by your honorable chairman, and he asked my opinion, and I said I did not think it went far enough, and I have stated the reasons why.

Mr. RICHARDSON. You really believe that the decision of the Commission, under the position you advocate, would be, in effect, final?

Mr. TOMLINSON. How is that?

Mr. RICHARDSON. The decision of the Commission under the policy that you now advocate would be, in effect, final?

Mr. TOMLINSON. No, sir.

Mr. RICHARDSON. Why would it not?

Mr. TOMLINSON. I am advocating the bill, and the bill speaks for itself, I believe.

Mr. RICHARDSON. I am talking about your views.

Mr. TOMLINSON. I gave some of my views personally.

Mr. RICHARDSON. I did not hear them.

Mr. TOMLINSON. Pardon me.

Mr. ADAMSON. Where there was a multitude of carriers, do you not believe that the secret discriminations and rebates would be worse than now, under the rates fixed by the Commission?

Mr. TOMLINSON. Where there were a multitude of carriers?

Mr. ADAMSON. You say that consolidation is rapidly going on—

Mr. TOMLINSON. Yes, sir.

Mr. ADAMSON. If there were a large number of carriers still in operation, then under your proposed fixing of rate by the Commission would not these secret discriminations or system of rebates be probably as bad as now, or worse?

Mr. TOMLINSON. There is, of course, a greater likelihood of discrimination and secret rate and evasions where there is a multitude of carriers than where there are only one or two.

Mr. ADAMSON. Under the other system of rates?

Mr. TOMLINSON. I have no doubt that there would be some discrimination. There is this condition which has entered into the field, gentlemen, and which is a marked departure in railroad matters. You doubtless know that injunctions have been issued for some of the railroads between Chicago and Kansas City.

For instance, the railroads must not charge anything less than their published tariffs. Similar injunctions have been asked for and granted temporarily against several eastern lines. The injunctions which have been granted so far against eastern and western lines have been only temporary. The bill filed, I believe, by the Commission will be

argued some time in June. The court in Chicago, sitting there, granted temporary injunctions. The roads did not oppose them. They did not oppose them, I personally believe, because they believed that it would result in a greater revenue to them.

Mr. ADAMSON. I will state my question in this way. Give the Commission power to fix the rates as suggested, then retain substantially the present number of competing carriers. What reason would you have, or do you have, to believe that there would be fewer discriminations secretly than now?

Mr. TOMLINSON. The provision of the bill provides for money penalties for rebates and evasions.

Mr. ADAMSON. How do you get them—through the courts?

Mr. TOMLINSON. Yes, sir.

Mr. ADAMSON. Then this litigation is not shortened any, is not lessened any?

Mr. TOMLINSON. How is that?

Mr. ADAMSON. The end of your litigation is just as far off as now.

Mr. TOMLINSON. Yes, sir; but I think there is no doubt, if the road is fined once or twice, it will let up.

Mr. ADAMSON. There is no doubt that it will pay the lawyers better, but the question is, Will you scare the railroads worse and reduce the temptation of violation?

Mr. TOMLINSON. I think so. I think the point that you are discussing is very ably met in the provision for the proper penalties against carriers instead of against individuals, as in the present law.

Mr. MANN. If the courts retain jurisdiction over these injunction bills, it will end all this—

Mr. TOMLINSON. I think so.

Mr. MANN (continuing). Form of trying to reach discriminations?

Mr. TOMLINSON. Yes, sir; and competition will be a word and not a reality.

Gentlemen, this is a serious matter to the public. Mr. Chairman, you reminded me yesterday that we were perhaps interested in a bill introduced by Mr. Stevens, of Texas, regarding the extension of time a little for the detention of live stock in cars in transit from twenty-eight to forty hours.

The CHAIRMAN. Yes, sir.

Mr. TOMLINSON. We are interested in this legislation, because we are interested in the wishes of the live-stock men. We know the operations of the present law. We know what the proposed law would effect. Briefly stated, it may be said that the only live stock affected either by the present law or the proposed amendment is range stock in the Northwest—stock in Texas. The bill emanated from Texas people. They are the best judges of the condition of their live stock. They have a greater interest in its reaching market in good condition than anybody else.

Inhumanity to live stock prevents results by depreciation of appearance, and a consequent loss of price, and we think the owners can be safely relied upon to know when they want their stock unloaded in transit. We heartily indorse this bill, and think it should be put into effect.

The railroads are not prepared to unload the stock at any stated periods, and it frequently results that the stock has to be unloaded, say, every ten or twelve hours, to meet the necessities of the railroad,

on account of the absence of frequent unloading stations, while by the retention of the stock for a few hours longer in the cars it would avoid that unnecessary unloading.

I do not think there is any objection—I know there is not any objection—against this bill on the part of any practical live-stock man in the country. I am told there is an objection by certain humane societies. I dislike to question the experience or intelligence of these people, but I do not believe they understand the situation.

We heartily, thoroughly, indorse the bill of Mr. Stevens, and every live-stock organization of the country has favored it repeatedly, and I believe it ought to be enacted.

I thank you, gentlemen.

Mr. MANN. I remember, if I remember correctly, that last year the president of the Chicago Humane Society sent a protest against the passage of a similar bill that was then pending, and I wish, if you will, that you might submit a written statement in reference to this bill which may be inserted in the record for our future consideration.

Mr. TOMLINSON. I shall be very much pleased to do so.

I thank you very much, gentlemen, for your attention.

#### STATEMENT OF MR. WILLIAM H. CHADWICK, CHAIRMAN OF THE TRANSPORTATION COMMITTEE OF THE BOARD OF TRADE OF THE CITY OF CHICAGO.

Mr. CHADWICK. With your permission, Mr. Chairman, I will read the instruction which I hold in my hand from the Board of Trade of Chicago:

BOARD OF TRADE OF THE CITY OF CHICAGO,  
Chicago, April 9, 1902.

Mr. WILLIAM H. CHADWICK,  
*Chairman Transportation Committee.*

DEAR SIR: I have the honor to inform you that I have appointed you to represent the Board of Trade of the City of Chicago, at hearings in Washington, before the committees of the Senate and House on the subject of granting additional powers to the Interstate Commerce Commission.

While this association has indorsed the Nelson-Corliss bill, and you are to use your endeavors toward the passage of that bill, you are granted discretion to agree to such compromise as may be necessary in your judgment to secure the release sought.

Respectfully,

WILLIAM S. WARREN, *President.*

It seems to me that I may, in view of what has transpired in hearings of this committee since yesterday, draw your attention to the conditions which led to the enactment of the first act to regulate commerce.

I now quote from the proceedings of the National Board of Trade in Washington, December 15, 1897, the statement of Hon. George F. Stone, secretary of the board of trade in the city of Chicago, as follows:

The proposition to establish pooling is not by any means new, and we are therefore not left in doubt as to its effects upon the business interests of the country. The first prominent pool was the Chicago-Omaha, and was formed in 1870, and was found in its operation immensely profitable to railroads, so that in the year 1887 practically all competitive traffic was pooled. During those years business suffered, localities and shippers were discriminated against, secret rebates, to a greater extent than before or since were granted. Discrimination in favor of industries in which some of the parties to the pool were financially interested placed other industries under great and sometimes fatal disadvantages. One of the most mischievous and demoralizing pools that were established about this time was the Southwestern Railway Association, a vampire which for a decade sucked the lifeblood of the commerce of the Missouri Valley.

The Southwestern Railway Association solved the problem of how to get rid of competition and to rob the people within the letter of the law. Kansas City built a line to the South, and thought she had a line which could be used to fight this pool. It had not been in operation a year before this association, with subsidies, had it bound hand and foot. Another outlet to the East, by way of Omaha and Council Bluffs, was also shut up, leaving the Missouri River country absolutely at the mercy of the pooling lines. At every acquisition of competing lines rates were moved up a notch, until they reached an appalling figure. When this association was organized, in 1876, the rate on first-class matter between Missouri River Valley and Chicago was 50 cents.

It was at once advanced several cents, and in 1880 it had reached 75 cents on east bound and 85 cents on west bound. In a few months it was moved up to 90 cents. When the association was organized, it included the Burlington, Chicago and Alton, Missouri Pacific, Rock Island, and Wabash. The system was soon found incomplete in that there were several loopholes by which people were enabled to avoid the association's higher carriage.

One of these was the Missouri Pacific in Kansas. The business of ten points on the Gould system—Parsons, Chanute, Garnett, Ottawa, Humboldt, Fort Scott, Paola, Burlington, Emporia, and Junction City, since known as the ten junction points—was sent to St. Louis over Gould's southern line, avoiding the pool point. In order to divert this traffic through the pool, by which means alone the higher rates could be maintained, the association entered into an agreement to pay the Missouri Pacific a liberal percentage of the gross earnings of the pool on condition that this be sent via pool points. The amount paid the Missouri Pacific in 1885 on account of the ten junction points was \$660,000, the agreed percentage of the receipts of the association, which amounted to \$11,000,000.

During several years of the existence of this pool the shippers of the Missouri Valley had occasionally taken advantage of the rate offered by the Milwaukee and St. Paul Railroad to ship via Omaha and Council Bluffs. The pool, in order to prevent this, found it necessary to bind the Missouri Pacific and Council Bluffs Railroad from making special rates to Omaha and Council Bluffs. Here again a money plaster was applied, the pool agreeing to pay the two lines a percentage of the gross earnings, amounting to \$75,000 a year. The lines on their part charged the full local rates between the pool points and Omaha and Council Bluffs. The object of this was to make the rate via the Northern roads the same as that via the association or pool roads in order to keep all the business in the pool, as shippers would not use the Milwaukee or Northwestern at the same rate, owing to the great length of those lines.

The Burlington and Missouri River coming into competition with the Central Branch of the Union Pacific (a pool line), the association, in order to maintain rates and have the business pooled, subsidized the competing line to the amount of \$250,000 a year. The same principle was applied to the St. Louis, Fort Scott and Wichita after its extension into southern Kansas. The Fort Scott and Wichita, in consideration of the maintenance of rates and pooling business of its lines, received of the association a percentage of the gross earnings of the pool amounting to \$225,000 a year.

All the competitors who could be taken into the pools were thus brought in. The commissioner in the meantime turned his attention in other directions. Immediately upon the completion of the Kansas City, Springfield and Memphis, in 1883, the Fort Scott began to compete for the St. Louis business in conjunction with the St. Louis and San Francisco. By its connection with the latter at Springfield it was enabled to cut the association rate to St. Louis and still get a fair remuneration. In order to stop this, the association entered into an agreement with the Fort Scott and 'Frisco roads, by which the latter were paid \$8,000 a month on condition that they keep out of the St. Louis business. Such instances and similar combinations might be multiplied almost indefinitely, but sufficient is shown to indicate the nature of railway pools. They are inimical to the public interests.

They are in restraint of trade, they prevent competition, they are monopolistic in purpose and effect, they are odious in law, they are subversive of the very interests which railways were created to conserve—that is, the general welfare in so far as that welfare relates to the functions and obligations of a common carrier.

Now, this is a quotation from an article that was submitted in the year 1897, and it was well supported at that time, and has been since confirmed by history, as the history became public, and as the story was told more freely about the great success of those pools. After they were abolished, the men who were engaged in them and had



benefited by them had no further reasons for not letting the story come out publicly.

Year after year we plain people have been coming to committees of the Senate and House asking relief from conditions which are a disgrace to the Republic and which never should have been tolerated in this country. The people have long known and testified what the conditions have been, and their statements have had such full corroboration recently that their case is completely established beyond refutation. The Commission held that 23 cents was a reasonable rate from Chicago to New York. In 1892 the published rate was 29 cents. In 1889 the published rate was 13½ cents, and later 12 cents, from the Mississippi River to New York. That was caused by competition between carriers. That rate is to-day 18½ cents.

Now, we have here an instance that when the rate was 12 cents and was advanced to eighteen and a half cents the advance was greater than shown in the great pools to which I have referred, in which the advance was only 50 per cent, which seemed, at first sight, something that no traffic could bear and that no people, no committee, no Congress could indorse, and yet here is to-day, just instituted yesterday, a rate more than 50 per cent higher than the rate which had theretofore prevailed.

The CHAIRMAN. What did you say was the rate fixed by the Commission as a reasonable rate?

Mr. CHADWICK. That was long ago, many years ago.

The CHAIRMAN. In 1890?

Mr. CHADWICK. Yes, sir; in 1890.

The CHAIRMAN. What was that rate? I did not catch it.

Mr. CHADWICK. That rate was 23 cents.

Mr. MANN. Is the rate of eighteen and a half cents a reasonably high rate?

Mr. CHADWICK. If you will pardon me, Mr. Mann, I am not going to say anything about unreasonably high rates.

Mr. MANN. We have had the complaint made to us here that the grain rate was too low.

Mr. CHADWICK. Those men who say that may discuss it with you, if you please.

The higher rate has been made possible by the combination of lines between Chicago and the seaboard. The Pennsylvania has acquired the Baltimore and Ohio, the Norfolk and Western, the Chesapeake and Ohio, and lines north of the Pennsylvania have come mainly under control of the New York Central and Mr. Morgan.

A year ago the published rate on grain from Chicago to New York was reduced from 16 cents to 13½ cents. At the same time the railroads agreed to charge a secret rate of 11 cents. April 14, 1902, the published rate was advanced from 13 cents to 16 cents. This rate they must expect to maintain, for certain of the most important lines are under injunction to maintain the published rate. Apparently it is the intention to maintain a rate 5 cents higher this season than last season between Chicago and the seaboard.

When five or six men can sit down in New York and determine what the freight rate shall be from Kansas City to the Atlantic seaboard, from the Mississippi River to the Atlantic seaboard, and from the grainfields to St. Louis, Chicago, and Duluth, there is really no longer any competition in the transportation of grain, and that condition is practically here.

The Vanderbilt system, although not here in detail, the Pennsylvania system, as I term it one system, the Gould system, the Morgan-Hill system, and the Harriman system I have here.

These are the important independent systems which constitute in themselves—these five lines or five combinations—all the railroad lines in the country which it would be necessary to acquire to have absolute, complete control, and a monopoly of the railroads of the country. Those outside are the following:

The Atchison, Topeka and Santa Fe, with 7,481 miles; the Chicago, Rock Island and Pacific, with 3,818 miles; the St. Louis and San Francisco, with 2,887 miles; the Chicago, Milwaukee and St. Paul, with 6,451 miles, and the Illinois Central, with approximately 5,000 miles.

I will file all these papers with the committee, and you will see that the round figures which I assume of 100,000 miles now controlled by 5 men, the Vanderbilt line, comprising about 20,000 miles; the Pennsylvania system, with about 18,000 miles; the Gould system of about 16,000 miles; the Morgan-Hill system, including the Southern Railway, with about 37,000 miles, and the Harriman system, with about 16,000 miles, makes up this total, unless the Illinois Central was included in it, which I prefer not to include, in order not to obfuscate things too much:

	Miles.
The Vanderbilt system .....	20,000
Pennsylvania system .....	18,000
Gould system .....	16,000
Morgan-Hill (including Southern Railway, controlled by Mr. Morgan) ....	37,000
Harriman system .....	17,000
<b>Total</b> .....	<b>108,000</b>

#### IMPORTANT INDEPENDENT SYSTEMS.

Atchison, Topeka and Santa Fe .....	7,481
Chicago, Rock Island and Pacific .....	3,818
St. Louis and San Francisco .....	2,887
Colorado and Southern .....	1,142
Chicago, Milwaukee and St. Paul .....	6,461
Pere Marquette .....	1,747
Atlantic Coast Line .....	2,177
Seaboard Air Line .....	2,600
Plant system .....	2,207
New York, New Haven and Hartford .....	2,038
Boston and Maine .....	3,338
Illinois Central .....	5,000
<b>Total mileage</b> .....	<b>40,896</b>

#### VANDERBILT SYSTEM.

New York Central system (including the main line, the Beach Creek, the Fall Brook, the Mohawk and Malone, the New York and Harlem, the Roome, Watertown and Ogdensburg, the West Shore, and many others) ..	3,107
Lake Shore and Michigan Southern .....	2,084
Michigan Central (including the Canadian Southern) .....	1,635
New York, Chicago and St. Louis (Nickel Plate, including the Pittsburg and Lake Erie) .....	523
Chicago and Northwestern (including the Chicago, St. Paul, Minneapolis and Omaha, and the Fremont, Elkhorn and Missouri Valley) .....	8,769
Cleveland, Cincinnati, Chicago and St. Louis (Big Four) .....	2,287
Boston and Albany .....	394
Lake Erie and Western .....	725
<b>Total mileage</b> .....	<b>19,524</b>

## PENNSYLVANIA SYSTEM.

	Miles.
Pennsylvania Railroad (east of Pittsburg and Erie, including the New Jersey lines, the Allegheny Valley Railroad, the Philadelphia and Erie, the Northern Central, and many others) .....	5, 530
Pennsylvania Railroad (west of Pittsburg and Erie, including the Pennsylvania Company, the Peoria and Western, the St. Louis, Vandalia and Terre Haute, the Pittsburg, Chicago, Cincinnati, and St. Louis, the Cleveland, Akron and Columbus, the Grand Rapids and Indiana, and others). ..	4, 405
Long Island .....	391
Baltimore and Ohio (including the Cleveland, Lorain and Wheeling, the Baltimore and Ohio Southwestern, and others) .....	4, 025
Total mileage .....	14, 351

## GOULD SYSTEM.

Controlled by the Gould-Sage interests:	
Missouri Pacific and Iron Mountain .....	5, 372
International and Great Northern .....	891
Wabash (including the Wheeling and Lake Erie, and the Omaha and St. Louis) .....	2, 968
St. Louis and Southwestern .....	1, 293
Texas and Pacific .....	1, 619
Rockefeller and Gould interests:	
Missouri, Kansas and Texas .....	2, 480
Denver and Rio Grande (including the Rio Grande Western) .....	2, 301
Total mileage .....	16, 924

## MORGAN-HILL SYSTEM.

Controlled jointly:	
Northern Pacific (which owns 23,000,000 acres of land) .....	5, 487
Great Northern .....	5, 417
Chicago, Burlington and Quincy .....	8, 171
Erie .....	2, 605
Lehigh Valley .....	2, 178
Controlled by Mr. Morgan:	
Philadelphia and Reading (including the Central of New Jersey) .....	1, 677
Hocking Valley (including the Toledo and Ohio Central, and the Kanawha and Michigan) .....	882
Chicago, Indianapolis and Louisville .....	546
Southern Railway (including the Central of Georgia, the Alabama, Great Southern, the Cincinnati, New Orleans and Texas Pacific, and the Mobile and Ohio .....	10, 627
Total mileage .....	37, 590

## HARRIMAN SYSTEM.

Union Pacific (including the Southern Pacific, the Oregon Railroad and Navigation Company, and the Oregon Short Line) .....	15, 163
Chicago and Alton .....	918
Kansas City Southern .....	873
Total mileage .....	16, 954

While the powers of the judiciary should not be conferred on the Commission, it may safely be granted the right to arbitrate. We consider another provision absolutely essential to reasonably safeguard the interests of the public if this bill shall pass, namely, that as the Interstate Commerce Commission is composed of men who can have no personal interests in the matters brought before them under the provisions of this bill, the order of the Commission should stand

unless and until it be suspended or revoked by the circuit or other court or judge, as may be provided. The powers of the Commission are now simply advisory.

For the first ten years the Commission exercised the power of revising rates, which proved quite satisfactory to the country. The decisions of the Supreme Court, about 1897, terminated that power. The consequences have been most serious during the succeeding five years. Of about 135 orders made by the Commission, I think that 68 of them dealt with unjust and unreasonable rates, and for the correction of such wrongs I have not been able to learn of a single instance where the remedy sought has been obtained.

If bill 8337 is to become substantially the law, we earnestly hope and recommend that it be amended so that any definite order made by the Commission, and provided in the bill as printed, shall be reviewable by but one particularly designated court of the United States, which shall have jurisdiction in all parts of the United States and Territories, or shall be reviewable by one particularly designated judge of some court of the United States, who shall have the same jurisdiction, for the reviewing and passing on such orders, so that all causes which shall be heard under the act may have the benefit of expert service of the highest order.

The railroads ask for protection against each other. Are they not willing that the public be granted a similar protection against the railroads themselves? Why not? My personal experience with railroad managers has led me to believe that individually they are the peers of any class in the Republic. Why should they collectively take any different course than each would pursue of his own volition individually? I am not willing to concede that the tariff rates of freight on grain of late have been or now are too high, nor do I complain that the different railroads, even in this period of commercial activity and admitted prosperity, are collecting more pay for their services than honestly may be defended as fair and reasonable; for surely profits may be had more easily and paid with better grace in prosperous than in pinching times.

A crying and annoying evil, which works hardship in many cases and seems to be indefensible, is the irregular, heterogeneous classification of freight, and in this day of organization and method it seems strange that it has not heretofore been regulated.

Whenever any bill is passed, it should provide protection for the carriers and the public by making it a misdemeanor, punishable by an exemplary fine, for any person acting as principal or otherwise to obtain transportation at less than tariff by misrepresentation of classification, weight, character, or any other fraudulent means.

As stability of rates, when fair, is a great desideratum, the orders of the Interstate Commerce Commission should be continued in force and obeyed for two years from the time they become originally operative and observed. The people are here again with a bill—those same people who have been here time and again—seeking relief of evils which are now undenied and undeniable. It may seem strange that they continue to come again and again, but, as you well know, they have no hope save in you, you who stand morally pledged to do the fair thing, the reasonable, the proper, the possible thing; the thing that is right for the whole community of interests—trade, producer, consumer, shippers, carriers.

I now wish to say a word on recent conditions in the Southwest. Evidence was recently made public showing the following state of affairs: That Richardson, of Chicago, operating grain elevators and doing a grain business on the Santa Fe system, and Robinson, of Kansas City, operating in grain on the Missouri system, partially in the same territory, each received from their respective railroads a private, and to all intents and purposes a secret, rebate of 5 cents per hundred, and that the Santa Fe authorized and employed the register of concerns to purchase the grain at certain stations, paying to them a stipulated brokerage for handling the grain for the account of the Santa Fe, which thus departed from its proper functions as a common carrier, and thereby, instead of performing its duty as a servant of the public, became the competitor of those legitimately so trading, engrossing their business.

This seems to me one of the most flagrant of all the numerous instances of wrongdoing on the part of the railroad fraternity which has come to my attention.

It is of little use to bring to your notice any facts whatever, unless this one case makes upon you the impression that it should. Your honorable chairman asked yesterday that some facts be laid before this committee in lieu of argument, and I therefore take an early opportunity to apprise you of this one fact, which, it seems to me, unless promptly checked by legislation which will check, foreshadows practices by the common carriers which can not fail to produce the most deplorable results. What will happen if the railroads go on and engross the business of the iron dealer, the coal dealer, the lumber dealer, and so on, as they, in the instance cited, have treated the grain men in the territory named? Anarchy is the answer.

In support of what I have said here I will say that this evidence was taken by the Interstate Commerce Commission in public hearing at St. Louis, Chicago, and Kansas City, within the past few months, and can be learned from their reports or their notes.

Devices for evading the interstate-commerce law have been abundant in the past, and as fast as one is uncovered and corrected, wholly or in part, a new device has been found, and who can say when and where the end will be? Probably you, each of you, know more than I do of this question of the regulation of common carriers, and I do not doubt that you know that the abuses of this ought to be evaded, and that we ought to obtain from you at the earliest possible day a full measure of relief from discrimination. I am not prepared to indorse any proposition to confer upon any commission whatever the power to primarily institute and make "just and reasonable rates."

It seems to me, however, that it is entirely proper and right that the Commission may examine into all the conditions surrounding, pertaining to, affecting, or affected by any rates or practices which may be established by carriers, and if after a full hearing the Commission finds grounds on which they consider an order justifiable, then, as arbitrators, the order of the Commission should stand until or unless revoked by the court of review, for the making of a rate or the practice by the railroads is necessarily in the first instance *ex parte* and should not stand, unless confirmed by the arbitrator, the Commission. Relief from the evils of discrimination of every kind and degree, relief from the evils of unreasonably high rates, and to secure the benefits

of uniform rates are what we intend to seek through the Nelson-Corliss bill.

This is our charter to-day, and we think that the bill will accomplish the end sought, but if it will not accomplish that, show us how to amend it, so that justice may be done the public and the railroads alike, and you will confer an inestimable boon on millions who are affected by the matters under discussion.

I have the honor to represent before you the most important commercial organization in the world; an organization comprised of business men, merchants in and about Chicago, and in all parts of the country, and also in those countries which are in close commercial touch with the United States. The vessel and the railroad interests are strongly represented in our membership, as well as all the important banks and kindred interests. We are in close touch with all the agricultural interests of the continent, and may fairly claim to know and reflect the crying needs of the people, and this we intend to do, and believe we are now doing.

Year in and year out, for more than—think of the time the country has suffered—more than thirty years, for the Chicago-Omaha pool was formed in 1870, and was grinding on like the car of Juggernaut in full vigor thirty years ago. The public has carried this old man of the sea on its shoulders through a generation. This is no dream, for the vast volume of evidence given before the committees of Congress, before the Commission, before the courts, is perhaps so small in proportion to the amount that would be forthcoming should every man tell what he knew about railroad discrimination, as to constitute but an insignificant per cent of the whole, but yet what a mass of testimony has been printed upon these subjects.

Our prayer is before you. You are the only people who can assist us at this stage of the proceedings; you are the people on whom rests the responsibility for withholding from the people their rights and granting to the railroads the privileges which they deserve to enjoy. Few, if any, will complain that the people have not done their duty fully.

Of the bills proposed, of the three or four which have been introduced, we indorse the Corliss bill. We have been in hopes that some action would be taken by which the members of the Interstate Commerce Commission would not be left dependent upon the fortune of political parties. Give us the best courts possible, give Congress a fair bill, practically what the railroads honestly know they need, and what the public has a right to regard as reasonable safeguards.

I have not anything further to say, Mr. Chairman, but I am ready to answer any questions I can answer, and those that I can not answer at present without having additional information or without giving the matter particular thought I will not try to answer. I will be here in town a day or two, and if you choose to hear me again I will try to answer them then.

#### STATEMENT OF MR. CHARLES NOYES CHADWICK.

Mr. CHADWICK. Mr. Chairman, I want just one word. I represent the Manufacturers' Association of New York. The Manufacturers' Association of New York, Mr. Chairman, is a representative body of a very large number of industries, as you are aware. We have regu-

lar monthly hearings, and all matters of importance that relate to the interest of the country come to our organization through its committee.

This bill which is before you was referred to the committee on legislation and reported favorably to the Manufacturers' Association, and by a unanimous vote was approved, and I was appointed as a delegate from that organization to appear before you in the interests of that bill.

I do not think it is necessary for me to enter into any argument in favor of it. All possible arguments have been presented to you here this morning very fully, and I presume that you have heard them before, and it is simply in the interest of common sense and fair dealing, it seems to us, that this bill should be passed. We feel that there should be some organization with power, not an advisory board, but an organization with power, to give immediate relief when the necessity arises.

The delay arising from litigation, as you know, covers a period of sometimes a number of years. Conditions change, and it is very necessary that when a particular condition arises it should be met at that time, and in the interest of the community at large should be adjudicated upon; and if the body, the organization which has this power, fails or does wrongly, as we understand under the provisions of this bill, the remedy is had through the court.

The bill seems to us eminently fair. It is to the interest of every person in the community. We feel that all should be treated alike—the small town, the large town; the small dealer, the large dealer. In our business interests, which spread all over the United States, we have come into contact time and time again with great injustices.

We feel that this bill will meet those injustices and, so far as it is possible within the limits of human nature, settle them satisfactorily and wisely and intelligently.

I do not know that I need to say anything further except to inform you, as I have, that that is the feeling of our organization and that we hope the bill will pass.

The CHAIRMAN. We can give you more time to-morrow, if you so desire.

Mr. CHADWICK. Thank you.

Thereupon the committee adjourned until to-morrow, April 16, 1902, at 10.30 o'clock a. m.

---

WASHINGTON, D. C., *April 16, 1902.*

#### STATEMENT OF MR. C. N. CHADWICK, OF NEW YORK—Continued.

Mr. CHADWICK. Mr. Chairman and gentlemen of the committee, this bill appeals to our organization for the reason that it seems an intent to perfect the original measure which was intended to clothe the Interstate Commerce Commission with mandatory powers. As we understand it, the decision of the Supreme Court of the United States found that the law was not far-reaching in that direction, and this amendment seems to me to be intended to cover the defects of the law.

It would seem to me that if a commission is to be of any benefit whatever, it should have a certain amount of power. A commission

which is advisory in its character, and which is supposed to regulate such vast interests as the interstate commerce of the United States, should not be limited, and we have felt that for that reason it was very wise to amend the law.

In Brooklyn we have had some bitter experiences in regard to transportation. We have in that city a rapid transit company controlling the entire service of the city, having a population of over 1,000,000 and that, in connection with the congestion upon the bridge, has developed in the borough of Brooklyn a committee of 50, which has endeavored for the last two years, as far as possible, to regulate the bad conditions existing there. We have an advisory commission, but it has no power whatever, and we have a bridge commissioner, and we have had him appear before us and before the city authorities for the last two years. We have been working along that line, but have accomplished nothing. The conditions there are intolerable.

In the development of the resources of the country there come times when capital will be invested in certain localities and vested interests will be developed. People will gather together in places for the purpose, perhaps, of operating factories, and flourishing villages may be constructed, depending, of course, upon the transportation facilities that are afforded for the incoming and outgoing products of such factories. Then a time comes when, for reasons that appeal to the railroads, a change is made. Trains are taken off and other things are done to injure such a village, and it has practically no redress. Of course we can, as has been stated, go to the courts and ask for relief; but that takes time, and this relief is sought to cure conditions which exist now. That seems to me to be vital. It is a relief which gives damage for injury done for the time being, but it does not provide for continuous relief.

This Interstate Commerce Commission was organized for the purpose of changing the conditions which have arisen, after having investigated the subject thoroughly and having the evidence before it, and to thus be enabled to provide relief which shall be continuous and upon which all can depend. It seems to me that that is the vital point in the whole thing. Of course we will have the right to bring suit against individuals, and in such cases we can get certain relief, but it is a relief in dollars and cents for past damages. The vital point is to get justice and have fair play for all parties interested, in order that we can depend upon certain conditions and have those conditions remain practically unchanged.

We have on our rivers large boats and small boats, schooners and sailboats, and they have a right of way. There is an opportunity for each boat to avail itself of the use of that river and to know what it can depend upon. A common carrier should be placed in that category, and we who have been coming before this committee for so long feel that we ought to have a regular and fair rate of service on the railroads and that there should be no discrimination in favor of one party against the other. That, it seems to me, is the vital point in this matter; and for that reason we feel that it would be but common sense, fair and equitable, that we should have it.

Mr. RICHARDSON. Is it not a fact that the main complaint you have against the railroads is the matter of injustice on rebates?

Mr. CHADWICK. That is one of them.



Mr. RICHARDSON. Is it not true that that is the principal discrimination that is made?

Mr. CHADWICK. That is one of them, and it may be that the major complaints come from that cause.

Mr. RICHARDSON. That being secret, are you going to reach that by law?

Mr. CHADWICK. If you have an organization with power to enact penalties, you are in a better position to reach them.

Mr. RICHARDSON. And why?

Mr. CHADWICK. You will have to depend upon the general situation and the character of the men; their intelligence, ability, etc. You are always working against the limitations of human nature; and the main point is to secure that particular measure which will under all the circumstances give the best result. I do not think that even this measure will be an entire cure for all our troubles, because we all have a desire for riches, and we have favoritism to contend with.

The CHAIRMAN. Have you given any thought to the effect that it might have on the future construction of railroads? Would you go into the business of putting large amounts of capital into them when you knew that there was a commission whose action might be detrimental to them, and which might arbitrarily say whether or not they should be profitable?

Mr. CHADWICK. I think so. I think we invest in bad bank stocks and a number of things where we depend upon the good sense and ability of the directors.

The CHAIRMAN. Those are parties in interest. They are identical with you.

Mr. CHADWICK. That is true.

The CHAIRMAN. Would you be willing to establish a private business which would be subject to the arbitrary decision of a commission?

Mr. CHADWICK. We have done that already in our courts. They have no interest whatever in our affairs; and men do not hesitate to enter into all sorts of business engagements knowing that many of them will be subjected to the adjudication of the courts.

The CHAIRMAN. That is true; but you have the power to go to the court of last resort, and to have complete investigation, and no judgment is made effective until after trial is had.

Mr. CHADWICK. Is not that provision in this bill?

Mr. RICHARDSON. No, no.

The CHAIRMAN. No. Under the terms of this bill, the judgment would go into effect while the trial is going on.

Mr. CHADWICK. Yes; but there would be appeal to the circuit court.

The CHAIRMAN. But in the meantime the judgment is going to be executed.

Mr. CHADWICK. That is only temporary. We have that condition now. If I engage a carpenter to do work on my house and through forgetfulness or neglect or for any other reason I fail to meet his bill when it becomes due he can get a lien upon my property.

Mr. DAVIS. But you can suspend that judgment by going into court.

Mr. CHADWICK. But I have got to fight it.

Mr. ADAMSON. Would you put the power into the law to say what that carpenter should charge you?

Mr. CHADWICK. I think the conditions are a little different in the two cases.

The CHAIRMAN. We will be glad to hear you upon that point.

Mr. CHADWICK. What I am saying are simply the points which come to my mind. The only thing that I would like to say upon that point is that it seems to me a common carrier is different from a man who is engaged in the ordinary business affairs of life. The common carrier has had conferred upon it certain peculiar rights. In New York we have given certain corporations franchises which give those corporations opportunities to earn immense sums of money, and we have been making an effort, which finally culminated in law, that those franchises should be taxed. That is right along this line, and I contend that the common carrier is contradistinguished from a man in ordinary business affairs. I do not know that that is true, and I do not know how it may strike you, but it is the best answer I can give you.

Mr. RICHARDSON. Your idea is that the railroad is performing a governmental service?

Mr. CHADWICK. Yes. More than that, it is performing a special function for the public.

Mr. RICHARDSON. And you think it ought to be held up to some standard for such service, just as if the Government were rendering the service?

Mr. CHADWICK. Substantially. Their situation is a peculiar one, and it is different from the ordinary business. That is a point which it seems to me is important.

#### **STATEMENT OF MR. DAVID BINGHAM, CHAIRMAN OF THE DISCRIMINATION COMMITTEE OF THE NEW YORK PRODUCE EXCHANGE.**

Mr. BINGHAM. Mr. Chairman and gentlemen of the committee, the chairman of our produce exchange has just come out of a fight before the New York legislature, which affects us a little more than the Interstate Commerce Commission does, because the great bulk of our grain comes from Buffalo. New York State has grown by reason of the building of the Erie Canal, and if it is to retain its supremacy it will be by the enlargement of that canal and not by appealing to the legislature, as we think, because the rapacity of the railroads will all the time crowd us in regard to rates so that we can not live.

I am specially charged to present this memorial to this committee, and as it is quite short, I will read it:

The provisions of these bills are identical, and their object is to confer upon the Interstate Commerce Commission powers which will make operative the interstate-commerce act as originally enacted by Congress and to make effective the orders of the Commission for the correction of abuses which exist in interstate commerce, especially unjust discrimination against individuals, firms, corporations, and localities. The phraseology of the original interstate-commerce act, as interpreted by the Supreme Court of the United States in various decisions, has been found insufficient to give effect to its purpose.

Under the act as it now exists the orders of the Commission can only be rendered effective by a judgment of the United States courts, and when application for such judgment is made the findings and decisions of the Commission are *prima facie* only and the railroad companies have the right to offer testimony *de novo* upon the subject. The result of this condition of the law is that important evidence is often withheld from the Commission and reserved to be offered for the first time in court. The pending amendments provide a carefully drawn remedy, which gives effect to the administrative orders of the Commission while securing to the defendants the right of appeal to the United States circuit court and the Supreme Court. The bill provides that the orders of the Commission shall be reviewed upon the evidence upon

which the Commission acted, except that in certain circumstances additional evidence may be taken, but this right is so guarded as to prevent its becoming an abuse.

These amendments do not confer upon the Commission any general rate-making power; this power is still left with the common carriers. The pending bills seek to give the Commission power to correct rates when they have been shown by judicial investigation to be unreasonable, unlawful, or discriminative, the orders of the Commission to be obligatory only for a period of two years.

As a substitute for the imprisonment penalties of the existing act, fines are prescribed varying from \$1,000 to \$20,000, with the view of facilitating the production of evidence and the more effective enforcement of the penal provisions of the act.

That, in substance, is all the Produce Exchange desires specially to present to this committee. As you know, in New York, as I said before, we get a very large amount of our produce by water. What we get by rail comes very largely from Buffalo, and there we have what is known as the Trunk Line Association. The Trunk Line Association, gentlemen, get together and they apportion the amount of traffic each railroad is allowed to carry from Buffalo to New York. For example, they say the Lackawanna Road will carry  $6\frac{1}{2}$  per cent; the Lehigh Valley Railroad will carry, say, 15 per cent; the New York Central Railroad so much, and so they divide it all out. When a railroad reaches its percentage it has got to stop and carry no more until some railroad which is behind has caught up.

For example, along in November, just a little while before the closing of the canal, a friend of mine had some indian corn in Buffalo. He wanted to bring it down to New York. The agent of the Trunk Line Association said to him: "You must bring that over the New York Central Railroad." He went to the New York Central and he said: "Can we have cars to move that corn?" They said: "Yes; but it will be two or three weeks before we can give them to you." He said: "I want to move it for a steamer going in November." "Well," said the New York Central man, "You will have to take your chance." He went to the Lehigh Valley Railroad; he asked them whether they had any cars. "Yes," they replied, "We have plenty of cars." "Will you take that grain?" said my friend. "We can not, unless you get permission from the association."

He could not get permission from the association to allow the Lehigh Valley Railroad to carry that grain, although that railroad had the cars. The New York Central Railroad was playing the dog in the manger, and the result of it was that he had to get that grain brought by canal and take the chances of its arriving in time.

Those are the conditions which we find to be almost intolerable.

The CHAIRMAN. Would not that be a subject for regulation by the legislature of New York? Both points—the point of shipment and the point of destination—were in New York in that case.

Mr. BINGHAM. That is why we went to the State of New York, Mr. Chairman; but the fact being that the railroads from Buffalo to New York, with one exception, pass through New Jersey, the Interstate Commerce Commission claim that this is interstate commerce. In New York they claim it is not interstate commerce when it suits them, and in most cases it suits them that way. They say, "We will not file our tariffs," and I believe they do not file them. But make an arrangement with the New York Central for grain from Buffalo to New York. They may send it by the Central. In that case it is New York State traffic. But if they send it by the Western route, then is interstate traffic, as it suits them.

Those are the conditions under which we are seeking to get a remedy. We do not think ourselves that if this bill is passed we will have the commercial millennium right away, and we do not think if it is defeated the United States is going to the dogs at once, but we think it would afford a substantial relief to have it passed. We have not, either, the same great objection to what is known as pooling that has been developed before this committee. We think that some arrangement might fairly be reached which would permit the railroads to go into some kind of an agreement to regulate rates. You heard yesterday that five men—they are not Chicago men, by the way, but New York men—control practically all the railroads in the United States. As those railroads are consolidated into large companies you can readily understand that this question of individual discriminations will rapidly be eliminated.

Competition is all very well where this little railroad is run in competition with that little railroad and the competition exists largely by giving rebates; but destroy that competition and the little man who was a very important man in the little railroad ceases to have the importance in the big combination. The Senator from Rhode Island is a very big man in Rhode Island, but spread him over the United States and he is very thin. This man down here who now gets these favors from the little railroad when it is absorbed in the big railroad won't be able to get them.

Mr. RICHARDSON. The combination, then, is the manner in which you reach the trouble of rebate?

Mr. BINGHAM. As between individuals, we think.

Mr. RICHARDSON. Individual rebates?

The CHAIRMAN. In your judgment that would obliterate discriminations as to localities as well as individuals?

Mr. BINGHAM. No, sir; that is as to individuals. New York does not come now with any particular complaint of discriminations against individuals. We are treated pretty much alike there, because the railroads are pretty large corporations and nobody has got the pull. It is the pull everywhere that brings the rebate. A man who has a pull goes to a small railroad. He gets a pass and gets all sorts of favors. But when it comes to a large combination, such as the Pennsylvania Railroad Company, I do not think anyone would charge the Pennsylvania Railroad Company with discriminating in favor of individuals.

We complain, of course, as to discriminations as regard localities. That has been our fight before the New York State legislature. And, by the way, it may be a matter of interest to this committee to know that the bill which we introduced into the New York legislature contains certain provisions, and that with one exception every provision that we asked for in that bill was granted to us by the Trunk Line Association. They conceded all our requests, so that as it stands to-day these arrangements with the railroad are very fair. But we would like to have that fixed. You do not know when they will go back on you.

Every country in the world, including this one, has found it necessary for the supreme power to regulate railways—extending from Austria, which owns its railroads, to Great Britain, which simply uses some regulation. The principle for which we are contending to-day is one for which we contended for ten years, and which brought the original interstate-commerce law. When we got that law and got that

Commission we thought that we got everything we wanted. It has taken us fifteen years to find out that we got nothing. The railroads have found a hole in this law through which they can drive their coach and four. We find it is of no practical benefit to us. The New York Produce Exchange has spent about \$10,000 to have the Interstate Commerce Commission investigate a case.

We would not spend 7,000 cents now to bring any complaint before them; it would not be of any use. They have no authority to enforce their decisions. That is the weak point of the law. What is the use of giving a commission power to investigate and then not give it any power to enforce?

Mr. RICHARDSON. You make the Commission, then, supreme and arbitrary, give it an arbitrary power to render a judgment at once?

Mr. BINGHAM. Yes.

Mr. RICHARDSON. And enforce it?

Mr. BINGHAM. Yes.

Mr. RICHARDSON. And then afterwards try the case in the higher court?

Mr. BINGHAM. Yes, sir. Then we put the railroad companies in this position; that they will have to do the running before this body.

Mr. RICHARDSON. What would be your remedy? Suppose the Commission were to fix the rate and require the railroad people to pay that rate; the railroad has to take the appeal to the circuit court. Suppose the circuit court decides against the railroad and sustains the decision of the Commission. Then the railroad takes it up to the last court, the Supreme Court of the United States, and the Supreme Court holds that the judgment of the Commission was wrong, and that you have been imposing a burden on the railroads during those two years, that you have been unjust and unfair to the railroads, and that they have been losing a large amount of money thereby. What would be the remedy for the railroad?

Mr. BINGHAM. Then the railroads would be getting some of their own medicine. They would be suffering the loss which we now have to suffer. They would have the remedy which we now have. The only remedy which we have is to appeal to you.

Mr. MANN. You want to shift the burden on the other shoulder?

Mr. BINGHAM. Yes.

Mr. MANN. Put the burden on somebody else's shoulder?

Mr. BINGHAM. We have been paying for years too much. I will illustrate the point.

Mr. COOMBS. You want to get back some of your money by that?

Mr. BINGHAM. We can not get back our money.

Mr. RICHARDSON. One wrong does not justify another, not according to morals?

Mr. BINGHAM. Sometimes it does. If a man hits me in the street, I will be apt to knock him down. We are tired of being too easy with the railroads. We have spent some twenty years, more or less, fighting these railroads, and they walk over us unless we threaten them with the legislature. It is the only body they care anything about—the only body that they fear. Let me give you an illustration. We have a State commerce commission in New York State—a board of railroad commissioners. Twenty years ago, more or less, we made a complaint to them in regard to the charge there for spouting grain from an elevator into a ship alongside. It exists to-day, by the way.

If I send to the railroad company and say I want that grain taken out of that elevator and send my ship alongside, they will put it into a lighter and tow it alongside my ship and charge me nothing; but if I say, "I will save you that lighterage," that I will send up my ship and put it alongside of that elevator, then they charge a cent a bushel. What is that for? That is clear plunder. One year, twenty years ago, the New York Central elevator loaded 270 ships, and from that day to this they have only loaded one ship, because they put that 1 cent a bushel on to prevent the loading of ships at their elevators. Our railroad commission recommended—and they have the same power as the Interstate Commerce Commission—that that charge be taken off. That is all that ever came of it. It is there and will stay there until somebody has some greater power than simply to recommend.

The CHAIRMAN. What are the charges? What does it cost now to take a bushel of wheat that goes down on the New York Central road from the vicinity of Harlem River and put it on board of an outgoing steamer? I have heard it said, and have heard it said in this room here by a New York witness, that it costs 3 cents a bushel to pass the water front of New York.

Mr. BINGHAM. The charge is three-quarters of a cent a bushel.

The CHAIRMAN. These gentlemen made this charge before this committee—that the New York Central had a rate of \$20 a car from Buffalo to New York; that \$2 of that went to the railroad company and \$18 of it went to some transportation company, some scow company.

Mr. BINGHAM. Lighterage company.

The CHAIRMAN. A lighterage company; \$18 went to that company for transporting it across the water front of New York.

Mr. BINGHAM. I give that up. I never heard of an arrangement of that kind. I am fairly familiar with the arrangements in New York and I can tell you about that; these hypothetical arrangements I do not know about.

The CHAIRMAN. I think he did not regard that as hypothetical.

Mr. BINGHAM. The elevating charge in New York is three-quarters of a cent; that is, it is a cent and an eighth, and they rebate three-eighths. Why they do it that way of course I am not here to defend. All the grain coming from the West to New York is subject to a charge when they come to divide up among the various railroads, in the first instance of 3 cents a hundred for lighterage.

The CHAIRMAN. Was that 3 cents a hundred or 3 cents a bushel? It was probably 3 cents a hundred.

Mr. BINGHAM. I think that is probably what you are thinking about. That is a question between the railroads. If the rate west of the Mississippi River to New York was 27 cents before the carriage is prorated, they will take off 3 cents a hundred at that rate for the terminal charges in New York. Then they will prorate the balance. That 3 cents goes to the railroad company that does this lighterage business, and that charge of a cent a bushel from the elevator I speak of is charged because they wish to retain that 3 cents a hundred. If I should send my vessel up to the elevator, you could see they would not spend a fraction of that 3 cents. They would save that entire amount; but if they did that the western road would want to add it on to the rate of freight they got. That is the 3 cents I think the gentlemen referred to. That is between the railroads; that does not effect the merchants,

Mr. CORLISS. Will you state what the lighterage charges are in New York on a carload of grain from Buffalo to any point beyond New York going through New York?

Mr. BINGHAM. There are two items. The lighterage charge is a half cent a bushel. The elevator charge is three-fourths of a cent. The lighterage charge is distinct entirely from an elevator charge. A lighter simply takes the grain from the rail or store to the steamer or whatever the destination is. That charge is half a cent a bushel, on which they pay shortage. They guarantee the weight.

Mr. CORLISS. Is it not true that in all carload lots that enter New York they have to pay a lighterage charge of about \$18 a car?

Mr. BINGHAM. Who has to pay that?

Mr. CORLISS. Either the consignee or consignor.

Mr. BINGHAM. No; we do not pay any charge. That charge is a charge which is adjusted between the railroads. We bring our grain there, and we pay a flat rate, such and such freight, and it comes with a bill of lading to New York, and that bill of lading provides for free lighterage; that is, the grain is to be delivered free alongside the outgoing ship.

A BYSTANDER. It is \$18.

Mr. BINGHAM. But we do not pay that; we have no charge to pay after we make the contract.

Mr. CORLISS. Is it not true that there is a charge on all such shipments for lighterage fees, an average of \$16 to \$18 a car, that somebody pays?

Mr. BINGHAM. The Western road pays its share of it, that is all.

Mr. CORLISS. Do you know what the lighterage charge on a carload of produce going into New York is?

Mr. BINGHAM. I have stated what the lighterage charge is where it is lightered independently. That 3 cents a hundred is known as a terminal charge.

Mr. CORLISS. Does that include lighterage?

Mr. BINGHAM. Yes; but not elevating.

Mr. MANN. You mean the division between the railroad companies is taken out and the rest is the freight divided between the two or three lines that run through; that is, on the Michigan Central and the New York Central there would be the division of the balance of freight between those roads.

Mr. BINGHAM. Precisely. The first charge is 3 cents a hundred, which is practically clean profit to the New York road.

Mr. MANN. That is retained by the New York roads?

Mr. BINGHAM. Yes, sir.

Mr. CORLISS. Does the New York Central, for instance, if it is brought over the New York Central, get that 3 cents a hundred, or does it go to the lighterage company?

Mr. BINGHAM. It goes to the New York Central Railroad Company now. The railroads now, practically all of them, I think, own their own lighterage companies. In olden times, when I was first acquainted with the trade, the lighterage company was a wheel within a wheel. They had the fast-freight lines. These lighterage companies were companies formed by the directors in nice little places where surplus profits could be put, and they made favorable contracts with the railroad, the same as the fast-freight lines, but now the railroads run the whole machine.

Mr. MANN. What is the actual cost of lighterage?

Mr. BINGHAM. I stated half a cent a bushel.

Mr. MANN. I do not mean the charge; I mean the actual cost. Where they figure on 3 cents a hundred to the consignor what is the actual cost to the railroads?

Mr. BINGHAM. About three-eighths of a cent a bushel.

Mr. MANN. So, if they only charge the actual cost of lighterage it would reduce the freight rate on grain from Chicago to New York, or from any other points, that much?

Mr. BINGHAM. Yes, sir.

Mr. MANN. It would make a reduction of over 2 cents a hundred.

Mr. BINGHAM. Yes, sir.

The CHAIRMAN. Let me see if I have a correct understanding of what I think you said. There is a lighterage charge of half a cent in New York; there is an elevator charge of three-quarters of a cent; that is a cent and a quarter. Now, does all the grain going east—going through New York—that is lightered have to pay that charge?

Mr. BINGHAM. Practically; yes, sir.

The CHAIRMAN. Is there any other charge of any kind that is local in its character?

Mr. BINGHAM. Only some very slight charge. There is an inspection charge.

The CHAIRMAN. What is that?

Mr. BINGHAM. That is a charge of about 25 cents a car for inspecting the grain and saying what grade it is.

The CHAIRMAN. Give me as nearly as you can the cost to the Western shipper of getting a bushel of grain through New York. We have it now up to a cent and a quarter a hundred, besides these minor charges. Now, can you aggregate them, so we can get some idea of what it costs the producer of that grain to get it through New York City?

Mr. BINGHAM. Yes.

The CHAIRMAN. What is it?

Mr. BINGHAM. The railroad company owns its own lighters and it owns its own steamboats, and that lighterage which you are speaking of is included in the freight charge, for which I say it is 3 cents a hundred. That will not cost the railroad company much over a quarter of a cent a bushel. You might say three-eighths of a cent a bushel. Then the charge of taking it from the barge and putting it on board the steamer is three-quarters of a cent a bushel. That is the charge of the steamer for taking it on board. It costs the steamer \$2 a thousand bushels to take it when it is spouted in through the steamer and shoved back. I suppose you would hardly want to include that.

The CHAIRMAN. You know better than I what would be included in this cost. What I want to get at is the cost to the people of the West.

Mr. BINGHAM. I think we had better exclude that, because that is simply stowing their ships. If you put cotton aboard you have to have men shove it into the wings and so on, and wheat has to be treated the same way. That charge it is hardly fair to say the grain incurs. Then the total charge for grain is not to exceed a cent and a quarter a bushel. If your western shippers want to make a contract at a cent and a quarter a bushel for a year I can complete it for them, lighterage and all.

The CHAIRMAN. Then that is about the cost of the regular shipments from Chicago to Buffalo?



Mr. BINGHAM. That varies according to the demand. That is about as low as it ever goes down. The general rate of freight from Chicago to Buffalo is about one cent and a half to two and one-half, I think. The Buffalo charge is half a cent a bushel, to take it out of the lake vessel and put it on board of the cars, which charge—

The CHAIRMAN. Are wheat and corn ever sent from your port to European ports as ballast?

Mr. BINGHAM. Well, I have heard that question over and over again.

The CHAIRMAN. I mean without charge or with a mere nominal ocean charge?

Mr. BINGHAM. It has been done. I have been paid to ship grain. I have been paid to put grain on board ship and send it across the ocean because the vessel needed ballast. I have seen grain taken over and brought back again because it was cheaper to bring it back than to take it out. But modern steamships are built with water ballast, and they are independent of this ballast question. But within a few months perhaps you have seen that the steamship lines have combined, decided that they would not carry any grain across the ocean for less than 3 cents a bushel, and we are working under that combination now. Everything is combination. Railroads are combining and the steamship men are combining, and I do not know who is going to combine next.

Mr. RICHARDSON. Does the lighterage charge depend upon the manner in which you make the bill out? Is not the lighterage excluded if you bill it in a certain way?

Mr. BINGHAM. Everything comes to New York now lighterage free—that is, the charge is in the freight.

A BYSTANDER. The charge includes delivery at any point in the harbor.

Mr. BINGHAM. That is the ordinary way of making the contract; and so a rate given by the railroad from Buffalo to New York would include half a cent a bushel paid to the elevator in Buffalo; the railroad would pay that to one of the elevators which is in the combination. There is a combination up there of elevators.

Mr. ADAMSON. You represent a combination yourself, I believe you say?

Mr. BINGHAM. No; I was a director in the International Elevating Company, but they put me out.

Mr. ADAMSON. What did you say you represent?

Mr. BINGHAM. The New York Produce Exchange.

Mr. ADAMSON. That is an association?

Mr. BINGHAM. Yes; it is an association.

Mr. ADAMSON. I suppose the object of it is to promote the interests of the people who go into it?

Mr. BINGHAM. We are not in business altogether for our health.

Mr. MANN. You limit your membership?

Mr. BINGHAM. Our membership is limited to 3,000, and our memberships were selling down about \$75, because we have a great many too many members. The exchange is now engaged in buying up the surplus members to get less of them. Chicago has a membership of 1,800, and their membership is worth \$4,500. I am a member of it.

Mr. ADAMSON. You would not object to combination so much if your crowd could always keep ahead, I suppose?

Mr. BINGHAM. Oh, no; we are only opposed to combinations when we are not in them. [Laughter.]

Mr. CORLISS. That is the prevailing spirit of New York City?

Mr. BINGHAM. Yes, sir.

Mr. MANN. You spoke of the matter of pooling a while ago, and said you had no great objection to that. Let me ask you this question: If the law would be amended so that the Interstate Commerce Commission or the courts might decide speedily what is a reasonable freight rate, what would be the objection then to permitting the railroad companies to pool?

Mr. BINGHAM. None that I know of. I have in my hand here a proposition which I do not bring out officially, but which we at any rate think would be a perfectly fair one. We think the railroads would accept this proposition. We would be willing to accept it. We do not want to harass the railroads, because we require their services. We do not want them to harass us.

Now, if you do not mind, I will read this without recommending it, simply reading it as a suggestion. It runs this way:

Carriers subject to the provisions of this act, with respect to traffic subject to the act, may form associations to secure the establishment and maintenance of just, reasonable, nonpreferential, uniform, and stable rates, and for the promulgation and enforcement of reasonable and just rules and regulations as to the interchange of interstate traffic and the conduct of interstate business upon the following conditions:

(a) Articles of agreement shall be subscribed by the parties thereto, stating, among other things, that they are entered into subject to the provisions of this section, the terms upon which new parties may come in, how the decisions of the association are to be made and enforced, and the length of time for which the association shall continue, which shall not be more than ten years. Such articles when subscribed and in effect agreeably to the provisions of this section shall be legally binding upon the parties thereto and be legally enforceable between them.

(b) The articles of association shall be filed with the Commission at least twenty days before they take effect. If the Commission, upon inspection of the same, is of the opinion that their operation would result in unreasonable rates, unjust discriminations, insufficient service to the public, or would in any manner contravene the provisions of this act, it shall enter an order disapproving the same. In connection with such order the Commission shall file a statement of its reasons for its disapproval. Said order shall be final and conclusive.

(c) If the Commission, upon inquiry into the actual operation of the association after the same has gone into effect, is of the opinion that it results in unreasonable rates, unjust discriminations, inadequate service, or is in any respect in contravention of this act, it may enter an order requiring the same to be terminated on the date named, which shall not be less than ten days from the making of the order. Such order shall be final, and the effect of it shall be to render such articles of agreement null and void from and after the date named, except as to claims between the parties arising prior to that date.

(d) The Commission shall have the right to examine, by its duly authorized agents, the files and proceedings of such association, including all contracts, records, documents, and other papers; and it may require said association to file with it, from time to time, copies of decisions promulgated by it, and of its minutes of proceedings, or of other papers received or issued.

All orders issued by associations thus formed that in anywise affect rates shall be filed with the Commission, as provided in the original act in relation to the filing of tariffs.

Every agreement for the formation of such associations as are authorized by this section is prohibited except as hereby authorized, and every carrier, or representative of a carrier, acting as a member of such an association or acting for a member of such association, whether the same exists by virtue of a definite agreement or not, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be subject to a penalty of \$5,000 for each day said carrier or representative continues a member thereof or so acts, which penalty shall be enforced in the manner provided for the enforcement of those penalties imposed by the tenth section of said act.

Mr. MANN. It does not require the combination or pool or whatever you call it to fix and file the rates at the time it files the agreement with the Commission?

Mr. BINGHAM. What is that?

Mr. MANN. I did not notice that your article or charter or whatever it is requires that the pool or combination shall file its rates also when it files its agreement with the Commission in the first instance.

Mr. BINGHAM. No; so Mr. Kernan says. He has studied it from its legal point more than I have done.

Mr. MANN. Do you think it would be better to do that—let the Commission know what it is doing?

Mr. BINGHAM. Would you mind having Mr. Kernan answer that?

Mr. MANN. I will withdraw it for the present; I suppose he will take the floor later on.

Mr. BINGHAM. He has gone into the legal aspects of it. This has been prepared with considerable care, and I think we would have submitted it to the railroads if we could have gotten a meeting of them before coming here.

The CHAIRMAN. Is not that proposition embodied in the bill that was before this committee, recommended by the Interstate Commerce Commission, two or three years ago?

Mr. BINGHAM. There was some such clause, but it was not identical with this one. The Interstate Commerce Commission, as I understand it, are not opposed to combinations amongst railroads. We have those combinations, and it is a great deal better, it seems to us, to have legal combinations than illegal ones. You can do something with a legal combination, but when they get behind your back and make illegal combinations, or combinations outside of law, you can not reach them; you can not negotiate with them.

Mr. ADAMSON. The bill that the Commission recommended was one so that the Commission could manipulate instead of allowing the railroads to manipulate.

Mr. BINGHAM. We hope to have a law so that neither could manipulate.

Mr. ADAMSON. Well, I will say operate it, then.

Mr. BINGHAM. We want this thing to operate fairly between individuals and between localities.

The CHAIRMAN. Let me ask you this question; do you apprehend that there would be any danger to the shipping community in investing a commission with so great a power as that of fixing rates on transportation; that is, without any criticism at all or anything invidious to the gentlemen who are on the Commission, would not that be a great power and a dangerous power to put in the hands of three men who have to deal with the great combinations of capital and the great interests at stake that would be represented by the railways? In other words, is there not a danger that a rate in the interest of the railways would be made too great?

Mr. BINGHAM. There is some danger there. There is a danger, on the other hand, that they might buy up the whole business. They might in some future years get a Commission that they could buy, and decide everything in the favor of the railroads. As far as the danger is concerned, perhaps you may notice that it does not produce the slightest effect on New York speculation whether you pass this bill or not. It would not affect stocks one-sixteenth of a per cent. The railroads are not worried about this legislation; they are not afraid of the United States Congress. They might be afraid of some of the western congresses, some of the State legislatures, but they are getting friendly

with them now. There is always the court of last resort which we will come to, and that is the United States Congress.

If you pass a law inimical to the railroads, they can come before you and worry the life out of you getting you to repeal it. But it can not last long. The legislature is always ready to remedy evils clearly brought before them. It may take time, but they will do it. The question is, who is to suffer in the interim? We say let the railroads take their turn; we have suffered long enough.

The CHAIRMAN. You have made a suggestion there that is in point. There seems to be in your mind the opinion that the railroads by worrying them, as you have expressed it, can control the action of the 357 men that compose this body and the 90 men that compose the Senate. If that is true, is it not quite as probable, or more probable, that, by the same process of worrying, 3 men might be influenced and influenced in their interest?

A BYSTANDER. Five men.

Mr. BINGHAM. Well, yes; I think it very likely. In New York State our State commissioners are paid by the railroads, so they have it conveniently in their own power; and, by the way, they are paid \$8,000, and you pay them \$6,000. If you are going to invest these men with more power you ought to give them more pay.

Mr. ADAMSON. Don't you think, in other words, it would be easier for the railroads to get three commissioners than 400 members of the United States Congress?

Mr. BINGHAM. Yes, sir.

Mr. DAVIS. There is a President also, whose veto power is equal to two-thirds of Congress. You have to include him.

Mr. BINGHAM. I was not suggesting that there was anybody in Congress who could be influenced; but you never saw a body of men in this world yet where there were not some black sheep. Out of twelve men composing a commission, the best chosen men that I have known, one turned out to be a devil. So I suppose there are men even in Congress who are bad.

The CHAIRMAN. As you business men would say, that was a little more than 8 per cent?

Mr. BINGHAM. That is about as good a percentage as the best social body of men you ever got.

Mr. ADAMSON. Do you think New York and Chicago would agree to operate under the provisions of the same bill, or would we have to have separate bills for the two cities?

Mr. BINGHAM. I think they can get along very well together. There are a great many members. We are out to get all the plunder we can.

#### STATEMENT OF MR. S. T. HUBBARD.

Mr. HUBBARD. Mr. Chairman and gentlemen, I am authorized by the association of which I have the honor of being president to appear here to-day to advocate the passage of a bill which will carry into effect the decisions of the Interstate Commerce Commission without delay. It makes little difference to anyone who has a question with a railway corporation if it can only be decided after the crop or two crops or three crops in which he is interested are moved to market and have passed out of existence. We feel that the cotton trade of the United States would be very much benefited if the question of

rebates and the question of discriminations could be promptly settled. We at times suffer very much from those discriminations, not only in New York, but also in New England, and also in Georgia. It is true that the Interstate Commerce Commission, by one of its early rulings, decided that the waterways did not come under its control, and therefore they have given less attention to the complaints of cotton people than they have to those of the grain people, because they held that the Atlantic Ocean is quite free to everyone who wishes to place a vessel upon it to transport cotton from a Southern port to the Northern ports of the United States, a proposition which is true in theory but not true in fact, because in the course of time the railroads have ceased to terminate their lines upon the shores of the ocean.

A railroad corporation at the present time in the South owns the American Steamship Line out of New Orleans, which is the property of the Southern Pacific Railroad; they own the Ocean Steamship Line out of Savannah, which is the property of the Central Railroad of Georgia; they own the Old Dominion Steamship Line out of Norfolk and Richmond, which is the property of the Southern Railway; they control the Mallory Steamship Line out of Galveston. The result is that cotton which is shipped in bulk or from Texas to New England or to New York is as much on the railway car after it leaves either New Orleans or Galveston as it was the day it was put upon the car at Houston or Waco. The same is true also of cotton shipped from Atlanta or Augusta, in Georgia.

As an illustration of this proposition I would cite the fact that last June a consignment of 1,100 bales from Tyler, Tex., was shipped by the way of Galveston to Cohoes, N. Y., at a freight rate of 88 cents a hundred pounds. When that cotton reached New York it was stopped in New York by order of the consignors and I paid a rate of freight of 93 cents a hundred pounds; that was on cotton from Tyler, Tex., to the port of New York. In other words, the freight rate to New York was 5 cents a hundred pounds greater than the rate to Cohoes, which, as you know, is about 150 miles north of New York City, on the Hudson and Mohawk rivers.

In a similar way this season the rate of freight from Memphis, Tenn., to Lowell, Mass., is greater than the rate of freight from Memphis, Tenn., to Manchester, England. The rate of freight from New Orleans, La., to Fall River, Mass., on the 8th of March, this season, was 38 cents a hundred pounds. On the same day in the same steamship the rate of freight to Manchester, England, via New York, was 32 cents a hundred pounds.

I might continue with many of these illustrations. I will cite but one more. It will interest my friend from Georgia. In December the price of cotton in New York was relatively below the price of cotton in the Southern ports. I could not bring it from the South to New York. Believing it to be a profitable business operation we decided to receive 50,000 bales of cotton in New York.

We bought the contracts for that purpose—I and my associates. The cotton was delivered to us. We could not buy it in the South. A large portion of it was delivered to us by the firm of Inman & Co., of Augusta, and also by the firm—I have forgotten the name, but one of the Texas firms. We found after we had received the cotton that they had secured from the railroads the privilege of delivering the cotton in New York on an export bill of lading, which gave them the benefit

of about 20 cents a hundred pounds, or a dollar a bale. We could not secure that export bill of lading because we were merchants in New York.

Mr. ADAMSON. They can ship as though they were going to export it and then stop it?

Mr. HUBBARD. Yes, sir. I state the rate was 20 cents a hundred—that is, to the best of my knowledge and belief. Mr. McKenna, of Inman & Co., was very frank about it and said that they had to have a rebate. Of course he did not tell me what the rebate was. In a similar way I had a thousand bales shipped from Galveston on an export bill of lading, and I stopped that in New York.

These are illustrations from my own business, which I cite to show the point. What we ask is simply that the decisions of the Interstate Commerce Commission may be rendered quickly, with the possibility that the merchants may derive some benefits from the decisions.

For a merchant to have a decision in his favor after four years is of little benefit to him and of no benefit to the remainder of the trade. He may obtain a certain sum of money in return for a rebate, or a discrimination which he asserts has been made to another man, by the decision of the courts, but the rest of the trade must suffer, because he has simply made an individual case. As regard all the others in the trade, they have not filed complaints, and they have not got the decision. They have paid out their freight on the cotton, the cotton has gone into consumption—it has passed away—three or four years have elapsed, and the decision is not retroactive, excepting as to the case of the man who makes the particular claim. His case is decided. That is the process, as I understand it, of law. The case only applies to the man who makes the complaint. They consider that.

As I have said before, that it is exceedingly important to the merchants of the United States, to the spinners of the country, and to the agriculturists that the Interstate Commerce Commission, which was originally instituted for the purpose of preventing discrimination and for the purpose of giving to each locality such rates as would appear to be not discriminating against other points, should have the power to carry out the purposes for which it was constituted.

Mr. COOMBS. You speak of the agriculturists. From the evidence here it seems to me that the discriminations are all in their favor.

Mr. HUBBARD. The discriminations are all in favor of agriculturists?

Mr. COOMBS. Yes. I do not see where that comes in. I would like to have you tell me where they are discriminated against. I know that a number of witnesses who have appeared here have complained that discriminations were in their favor. I am simply asking you to explain that.

Mr. HUBBARD. Take the case of the planter who raises his crop and who sells it on the basis of the freight rate that conveys it to Manchester, England—and they are buying practically two-thirds of the cotton crop of the United States. It is a less rate than the rate to Fall River. I think his price is to some extent fixed by the fact that the rate of freight is less to Manchester.

Mr. MANN. You said a while ago that the rate was 93 cents from Galveston to New York?

Mr. HUBBARD. From Tyler, Tex., to New York I paid 93 cents a hundred, and the rate to Cohoes, N. Y., on the same bill of lading was 88 cents.

Mr. MANN. Now the rate is less than 40 cents. Is that a reasonable rate?

Mr. HUBBARD. The rate is less than 40 cents?

Mr. MANN. That is the rate now.

Mr. HUBBARD. You are misapplying two places. Tyler, Tex., lies about 300 miles north—

Mr. MANN. You gave the rate from Galveston.

Mr. HUBBARD. Yes.

Mr. MANN. A little less than 90 cents.

Mr. HUBBARD. Did I say Galveston—

Mr. ADAMSON. Your rate to Cohoes was 88 cents.

Mr. HUBBARD. The rate from Tyler, in the northern part of Texas, south to Galveston and then to New York and then from New York to Cohoes was on the bill of lading 88 cents. The rate from Tyler, Tex., to Galveston and then to New York was 93 cents.

Mr. MANN. Is the present rate a reasonable freight rate?

Mr. HUBBARD. The present rate a reasonable freight rate?

Mr. MANN. Yes.

Mr. HUBBARD. The freight rate is decided by a question of supply.

Mr. MANN. But to answer the question, is not the present freight rate from Galveston to New York about 30 cents?

Mr. HUBBARD. Yes, sir.

Mr. MANN. Is not that a reasonable rate?

Mr. HUBBARD. I can not say it is a reasonable rate or not; that is, the rate of freight. It has been that rate for a number of years. It may be 28 cents or 32 cents.

Mr. COOMBS. Is it a burdensome rate?

Mr. HUBBARD. No, sir.

Mr. MANN. If they give a similar rate or lower rate to England, does not that have a tendency to increase the price of cotton?

Mr. HUBBARD. How?

Mr. MANN. It gives them competition.

Mr. HUBBARD. If the spinner in England can get his cotton at a less rate than the spinner in the United States can get his cotton, and he buys two-thirds of it, does that give the agriculturist a higher price for his cotton?

Mr. MANN. If you put the rate up to \$1.30 instead of 30 cents, and two-thirds of it had to be sold abroad, would not that have a tendency to lower the price of cotton here?

Mr. HUBBARD. I do not think so; not if the people abroad have to buy the cotton. It is not like the case of wheat. You can not buy all the wheat—

Mr. COOMBS. It gives him a more extended market, does it not?

Mr. HUBBARD. How?

Mr. COOMBS. Oh, well—

Mr. HUBBARD. I would be glad to answer your question, but I do not understand it.

Mr. COOMBS. If it renders better facilities for selling in Europe, it takes his cotton there, and it extends his market there—from one hemisphere to another—does it not? And it brings more buyers to him. He invades other markets.

Mr. HUBBARD. The cotton crop of the United States occupies the unique position of being required all over the world. It is not in the

same position as wheat. It lacks the competition that wheat has. It is needed; it has to be bought.

Mr. MANN. Does lowering the freight rate on cotton from this country to England enhance the price of cotton?

Mr. HUBBARD. I hardly think so.

Mr. MANN. Does raising the freight?

Mr. HUBBARD. It makes little difference.

Mr. MANN. Then cotton raisers are not interested in this question at all. It does not make any difference to them what the freight rate is.

Mr. HUBBARD. It makes some difference.

Mr. MANN. If lowering the freight does not raise it and if raising the freight does not depress it, how does it make any difference?

Mr. HUBBARD. It is a matter of slight moment.

Mr. COOMBS. Then the agriculturists are not interested in this question, according to your statement, now.

Mr. HUBBARD. I should think the agriculturist is interested in having an equitable adjustment of rates of freight.

Mr. COOMBS. You do not seem to meet this question. You said one thing a while ago, when I asked you why the agriculturist was interested in doing away with the discrimination. You said he was interested; and now, asking you why he is interested, you seem to have arrived at an opposite conclusion, and say that he is not specially interested in it.

Mr. HUBBARD. I am sorry if I have conveyed that impression. It certainly makes a difference to the agriculturist on the railroad from Augusta to Savannah if he is obliged to pay very high rate of freight, and a little further on less rate of freight; it makes a difference to him.

Mr. COOMBS. We do not wish to misunderstand you. Upon the question as to the effect upon the producer, whether in the South or the West, we would like to have some clear definite statement.

Mr. HUBBARD. I believe that the agriculturist in the South is benefited by the establishment of an even rate of freight.

The CHAIRMAN. The time for adjournment has arrived. You may continue in the morning, Mr. Hubbard.

(Adjourned.)

---

THURSDAY, *April 17, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

Mr. HUBBARD. Mr. Chairman, Mr. Higbee is here this morning and is obliged to leave town, and he would like to present his case, and I will yield to him.

#### STATEMENT OF MR. ROBERT W. HIGBEE.

Mr. HIGBEE. Mr. Chairman and gentlemen of the committee, I am a member of the committee on legislation of the National Wholesale Lumber Dealers' Association, and for the purpose of getting it on the record only I would like to state that I am a member of the New York Lumber Trade Association, which is a local association.



They have also indorsed this bill, but I simply want to state that as a fact, not that I have any authority to represent them, although I am a member of the association.

Mr. Chairman, I take it, from having listened to the proceedings before this committee for the past two days, that it is not worth while to take up your time with any argument in favor of the necessity of some amendment to the present interstate-commerce act. All of the parties in interest, the railroad interests and the shippers, are both dissatisfied with the present conditions, and what we are trying and hope to accomplish is a just and equitable settlement of the vexed question by an amendment to the present act, and to do justice to both sides.

The four things which the shippers are greatly in need of are: First, that all shippers shall be treated alike; in other words, that the railroads shall charge a like amount for like services under similar conditions to everybody. Second, that additional power be given to the Interstate Commerce Commission, when an injustice is being done either to the railroads or to the shippers, to say what would be right in the case in hand, and to enter an order stating what is right and reasonable as between the two parties; third, that after this order has been made they shall have the power to enforce the order, and fourth, that pending the appeal, the order of the Commission shall be in effect.

I have had prepared a table showing the distances from New York of some 25 or 30 places which ship lumber into New York, which is as follows:

*Statement showing the distance, rate in cents per 100 pounds, and rate per ton per mile on lumber from points shown below to New York, N. Y.*

Distance.	From—	Rate per 100 pounds.	Rate per ton per mile.
<i>Miles.</i>		<i>Cents.</i>	
1,182	Menominee, Mich .....	25	0.423
1,388	Duluth, Minn .....	33	.476
1,348	Ashland, Wis .....	33	.489
1,209	Memphis, Tenn .....	31	.512
818	Indianapolis, Ind .....	22	.538
915	Chicago, Ill .....	25	.546
1,097	Appleton, Wis .....	31	.565
757	Cincinnati, Ohio .....	21½	.568
980	Petoskey, Mich .....	28	.571
865	Louisville, Ky .....	25	.578
715	Bay City, Mich .....	21	.588
709	Dayton, Ohio .....	21	.592
702	Saginaw, Mich .....	21	.599
1,273	Helena, Ark .....	40	.628
685	Ironton, Ohio .....	21½	.628
683	Ashland, Ky .....	21½	.629
411	Buffalo, N. Y. ....	13	.632
671	Kenova, W. Va. ....	21½	.641
667	Huntington, W. Va. ....	21½	.645
479	Grafton, W. Va. ....	16	.668
830	Murphey, N. C. ....	28	.675
899	Chattanooga, Tenn .....	31	.689
615	Charleston, W. Va. ....	21½	.699
717	Norton, W. Va. ....	25½	.711
604	Camden-on-Gauley, W. Va. ....	21½	.712
584	Wilmington, N. C. ....	21	.719
788	Knoxville, Tenn .....	28½	.723
316	Oswego, N. Y. ....	11½	.728
1,050	Nashville, Tenn .....	38½	.733
680	Panther, W. Va. ....	25½	.750
705	Asheville, N. C. ....	27	.766
392	Elizabeth City, N. C. ....	15½	.791
492	Elkins, W. Va. ....	21½	.874
628	Elizabethton, Tenn .....	28	.892

This table shows not only the distances, but the receipts in cents per hundred pounds, and also the rate per ton per mile, the rate per ton per mile being a constant factor in all railroad computations. This table covers twelve or fifteen different States. They are selected without any regard as to what the result would be, so that the outcome of this table is a perfectly fair result.

The point charging the most favorable rate to New York City on lumber in carload lots is Menominee, Mich., 0.423. The point suffering the greatest charge is Elizabethton, Tenn., 0.892 of 1 per cent per mile.

In other words, the shipper of lumber in the State of Michigan pays less than one-half of what the shipper of lumber from the State of Tennessee pays. The other twenty-five or thirty places vary from the 0.423 up to 0.892.

I will file this paper with the committee so that it may come before you in a regular manner.

Now, gentlemen, it ought not to take very much time to prove that there is no reason on earth why the shipper from Tennessee should pay more than twice as much as the shipper from Michigan. The cost of operating the railroads is about the same.

The CHAIRMAN. Is the cost the same?

Mr. HIGBEE. Practically. Some railroads have greater grades than others and some have greater curves, but the cost of the rails and the stock is the same. It may be a little different, but certainly there is not enough difference to warrant one railroad in charging more than twice as much as another railroad.

The CHAIRMAN. Are you familiar with the factors that enter into the cost of transportation in each case, or are you just stating this from published details?

Mr. HIGBEE. No, sir; I am not making this statement from their standpoint. I am not an expert in railroad matters.

The CHAIRMAN. I did not know but what you might know——

Mr. HIGBEE. I have been studying this subject for the last five years, and presently I will state why I took this question up.

Mr. COOMBS. Now, I do not understand this subject as well as I would like to. You would abolish the difference of rates between different points? What effect will that have upon competition? That is, you make a systematic scale with reference to prices pertaining to all things about these differentials and all else, and make some arbitrary rule; what effect will that have on the competition—that is, if you regulate prices arbitrarily by a fixed rule, will that have a tendency to do away with competition? I would like to have you pay some attention to that subject.

Mr. HIGBEE. I would like to ask a question, if I may. Do you mean competition as between the railroads or competition as between the shippers?

Mr. COOMBS. As between the railroads.

Mr. HIGBEE. The abolishment of competition as between the railroads without any regulation would be a very serious matter, but if we abolish competition as between railroads and have some competent practical power to fix the railroad rates, I can not see any reason for not abolishing the competition between the railroads, but the two must go together.

A few years ago the association which I have the honor to represent here lodged a complaint before the Interstate Commerce Commission

against the Pennsylvania Railroad, the Norfolk and Western Railroad, and the Baltimore and Ohio Railroad, the basis of the complaint being that the rates to New York from points on the Norfolk and Western Railroad were unreasonable and discriminating against shippers from that road.

Mr. ADAMSON. I wanted to ask you one or two questions about those railroad rates and distances. The point you speak of in Michigan, is that in northwestern Michigan?

Mr. HIGBEE. Menominee, Mich., is in the southern part, just over the Wisconsin line. They come together at the river.

Mr. ADAMSON. Is it any longer haul in Tennessee?

Mr. HIGBEE. Yes, sir; but the rate per ton per mile is a constant factor.

Mr. ADAMSON. I understand that, but I want to know whether the factors that make it are constant or not. The distance from Menominee, Mich., to New York is what?

Mr. HIGBEE. That is 1,182 miles and the rate is 25 cents per 100 pounds.

Mr. ADAMSON. What is the other distance?

Mr. HIGBEE. The distance from Elizabethton, Tenn., to New York is 628 miles, a trifle more than half the other distance, while the rate is 28 cents per 100 pounds. In other words, the rate per 100 pounds is greater for half the distance.

Mr. ADAMSON. Now, if a point twice as far away were to pay the same rate on lumber, it would shut that point out of the New York market entirely, would it not?

Mr. HIGBEE. That would depend on conditions.

Mr. ADAMSON. It might do it?

Mr. HIGBEE. Supposing the Tennessee rate was down on a par with the Michigan rate?

Mr. ADAMSON. Another question. Of course I do not mean to be exact as to the figures, but it is a fact that all railroads and all transportation companies are compelled to haul some commodities at a less rate per mile in order to allow them to get into the market at all?

Mr. HIGBEE. That is true. But these rates are on the same commodity.

Mr. ADAMSON. Let us see about the railroads. Through that country up there the railroads, on account of the character of the country, have very small curvatures, and a very small degree of grade?

Mr. HIGBEE. Yes, sir.

Mr. ADAMSON. And they have a tremendous volume of business all the time?

Mr. HIGBEE. Yes, sir; that is true.

Mr. ADAMSON. A railroad in that condition has fewer accidents and wrecks, has it not?

Mr. HIGBEE. That may be so, and it may not be so.

Mr. ADAMSON. The point that I am driving at is, considering all those things, with the further fact that down in the South and Southwest the railroads are newer, and on this range of mountains the railroads are newer, do not those things furnish some justification for this higher rate?

Mr. HIGBEE. They do furnish some justification, but that would hardly be sufficient to warrant them in charging twice as much for half the distance.

As I was saying, this association which I represent brought this complaint, the basis of which was that the shippers over the Norfolk and Western road were discriminated against. The testimony in the case—and I will be very brief—disclosed these facts: that the Pennsylvania Railroad controlled the Baltimore and Ohio, the Chesapeake and Ohio, the Norfolk and Western—three parallel roads. These roads all had an interest in Cincinnati. The Baltimore and Ohio road and the Chesapeake road and the Norfolk and Western road all had the same rate from Cincinnati to New York. Two of the roads, the Baltimore and Ohio and the Chesapeake and Ohio, allowed the shippers east of Cincinnati the benefit of the Cincinnati rate, but the Norfolk and Western road, while using the Cincinnati rate for the long haul up to Cincinnati, east of there ran upon the local basis, and the result was that we were paying about 30 per cent more.

Because of the decision the United States Supreme Court, which has held that competition renders the circumstances under which freight is moved sufficiently dissimilar to warrant a railroad in charging less money for a long haul than a short haul, we were barred under that clause of the present interstate-commerce act. Now, the point which I want to make is this: That is all right so far as the railroad is concerned. But the shippers of the Norfolk and Western road came into direct competition with the shippers from the other two roads in the New York market and had to pay \$1.50 and \$2 a thousand feet, to get their lumber into New York, more than their competitors, the cost of the lumber at the shipping points being to all intents and purposes the same. We feel that in view of that decision we are justified in asking that increased power be given to the Interstate Commerce Commission.

There is one point which has come up in the discussion of the last few days which I would like briefly to touch upon. There seems to be an impression made upon some of the railroad interests, and how far that impression goes I am not able to say, that this Interstate Commerce Commission, if these additional powers were conferred, would represent the shippers alone. I fail to understand why the Interstate Commerce Commission would not represent the railroad interests just as much, and just as thoroughly, as they would represent the shipping interests. They are appointed for that purpose; their powers could be used for the benefit of the railroads, if they needed the benefit of those powers, just as well as they could be used for the benefit of the shippers.

Mr. ADAMSON. What fix would you be in if the railroads should happen to secure the appointment on the Commission of three men of strong railroad predilections?

Mr. HIGBEE. Well, we would have to stand it, that is all.

Mr. RICHARDSON. The condition then would be worse than in the beginning?

Mr. HIGBEE. The condition would be very bad.

Mr. RICHARDSON. Like that of that house in the Bible?

Mr. HIGBEE. Yes, sir. However, we believe that a commission appointed by the President and confirmed by the Senate would be scrutinized very closely, and the gentlemen appointed to that commission very carefully considered before they were confirmed, and we believe that we are perfectly safe in trusting our interests in the hands

of the President and the Senate of the United States, and we are ready to take that risk.

And there is another point. The railroad interests have disseminated—

The CHAIRMAN. Let me ask you before you leave that point—you say that you are willing to take that risk. This commission would not in any event have the power to regulate your charges or your profits. Would you be content—as content—if there was a proposition to supervise your business and your charges? Would you then be as content?

Mr. HIGBEE. If there were conferred upon me the same privileges that the railroad has I would say yes. The railroad can go in and exercise the right of eminent domain, and take my house if they render—

Mr. ADAMSON. They can not take your house without making compensation.

Mr. HIGBEE. That is true, but there are instances where a man's property is worth more than market value.

The CHAIRMAN. How many instances have you known where they got less than market value where their property was taken?

Mr. HIGBEE. My experience is not sufficient, perhaps—

Mr. ADAMSON. If you know anybody that has that amount of experience, ask them.

The CHAIRMAN. You think that the right of eminent domain would compensate for the taking away from him of the right of regulating his own business and taking from him the power to regulate the price for which he would sell?

Mr. HIGBEE. If that right was conferred upon citizens everybody would have that right.

Mr. COOMBS. It is for the benefit of citizens that the right of eminent domain exists.

Mr. HIGBEE. I think that right is very broad, and if I was ever in Congress I would come here and oppose it.

I think the railroads have very great powers and very great privileges, which are very valuable.

Mr. ADAMSON. How many of them are chartered by the United States?

Mr. HIGBEE. As a direct charter, I do not know that any were. The Pacific Railroad, of course, has some legislation which allowed them to complete their road through to the coast. Most of the other railroads get their charters through the States, I think. That is a question which I do not feel competent to answer, because I have not looked it up.

Mr. COOMBS. I think the State governments do usually supervise. They have a railroad commission, just as they have examiners for the State banks and loan associations.

Mr. RICHARDSON. In my State, Alabama, the railroads pay the salaries of the railroad commission.

Mr. HIGBEE. I think that is true of the State of New York.

Mr. RICHARDSON. And we never have any trouble there with them.

Mr. ADAMSON. But the Federal Government has not undertaken to fix the charges.

Mr. HIGBEE. The Federal Government would have no right to fix the charges on anything except interstate commerce.

Mr. RICHARDSON. We have no trouble with the railroads in Ala-

bama. The salaries are paid by the railroads, and they relieve the people of that burden, small as it is.

Mr. HIGBEE. I have never heard of any trouble.

Mr. RICHARDSON. The power of the Commission is advisory, and there is never any complaint of any kind. We go along with them mighty smoothly and easily.

Mr. HIGBEE. We have had the same experience.

Mr. RICHARDSON. Then what are you complaining of?

Mr. HIGBEE. The interstate-commerce business.

Mr. RICHARDSON. Discrimination?

Mr. HIGBEE. Yes, sir; between localities. In this case it was fully 30 per cent.

Mr. RICHARDSON. The legislation which you propose is quite drastic. Do you think it would reach the rebate system?

Mr. HIGBEE. I think the rebate system should be treated in the same way as a physician treats a disease; the cause should be remedied, and then the rebates and cut rates would be removed.

Mr. RICHARDSON. How would this proposed Corliss bill relieve the railroads of that rebate system, which is a hidden affair?

Mr. HIGBEE. I will be very frank with you. I think the Corliss bill would not relieve it.

The CHAIRMAN. I did not catch that.

Mr. HIGBEE. I said that the Corliss bill will not reach the rebating or cutting of rates.

Mr. RICHARDSON. That is the chief complaint?

Mr. HIGBEE. Yes; that is the chief complaint. There are others.

Mr. RICHARDSON. And you think the bill before us would not reach that complaint and remedy it?

Mr. HIGBEE. I individually say so.

Mr. RICHARDSON. I mean you.

Mr. HIGBEE. Yes, sir. I am not speaking for my association or any other gentlemen on that.

Mr. RICHARDSON. You seem to be informed on the subject and I want to get your opinion.

Mr. HIGBEE. I am very glad to give you my opinion.

Mr. RICHARDSON. I know that. What we want to get is the very best thing for the railroads and the people.

Mr. HIGBEE. I think we all have the same object, and if there is anything that I can state I would be very glad to do it.

Mr. RICHARDSON. But the way I look at it, in my humble view of the matter, considering what I have heard here, from the variety of arguments we have had, very able and very instructive, the rebate, which is a mere matter of private arrangement, applicable to most of the localities, is one of the most serious charges that is made against the railroads. Now, the proposition in my mind is, how are you going to reach that?

Mr. HIGBEE. The only remedy that I could suggest is the remedy of allowing the railroad interests to make some arrangement among themselves, subject to the supervision and control of this Commission. For instance, if there were 10,000 carloads of lumber to be moved from Chicago to New York, if the rate was reasonable, just, and satisfactory, I can not see the slightest objection to apportioning those 10,000 carloads between the competing lines between Chicago and New York.

What difference does it make if the railroads can agree as to how many trains of cars each line would haul; they haul at the same rates, and no shipper is placed at a disadvantage to any other shipper, and I can not see any disadvantage as to that.

In conclusion, gentlemen, the lumbermen do not expect that the millenium is going to dawn when this bill is passed. We believe that so long as men are human and corporations are without souls they will all be trying to get the best of each other; but the passage of a right and proper interstate-commerce act is that for which we are striving, and which we are asking at your hands, and the passage of the Corliss bill in its present form, or in some amended form, would be a long step in the right direction. There is a demand for this legislation, and I think the necessity has been clearly shown.

I leave it in your hands with the greatest confidence that you will do what is for the best.

The CHAIRMAN. Let me ask you; suppose that the law was so changed as to make it obligatory upon the Interstate Commerce Commission, whenever a complaint was made, to thoroughly investigate that complaint, to ascertain the facts, to find out where proofs could be had for further procedure in court; and suppose it was then made their duty, after they had made a case and briefed it as a lawyer would brief his case of facts, to turn that over to the proper prosecuting officer; and that that made it obligatory upon him at once to put the law in force, either by an injunction or by a prosecution to punish the offender, providing the Commission had found the evidence; and that the court was then obliged to expedite by all proper means the immediate adjudication of that matter; why is not that a remedy?

Mr. HIGBEE. That is a remedy, but it is simply transferring the power we are asking for the Interstate Commerce Commission to the courts. Somebody has to decide what is right and reasonable, and when that question is decided no one would be in a position—

The CHAIRMAN. While the court would aid it in the process of adjudicating the fact whether the rate was a reasonable one or not and by the proper punishment of the freight agent who gave to you an unreasonable rate, compelled you to accept an unreasonable rate, let the Government prosecute this case; let it be done expeditiously; let you, as an individual, in compensation for the trouble that you have been to in making the complaint, recover your damages, or whatever damages have been authorized; would not the railroads desist very quickly from conduct that would be met in that way?

Now, I have thought that the difficulty was in securing the testimony upon which a successful prosecution could be based. I believe now that there is the difficulty, and I believe that if our Commission, instead of desiring the anomalous condition of being executive officers and judicial officers, and now legislative officers, would content themselves with helping the shipper to secure the proof that would give him proper standing in court, this whole difficulty would have been adjusted long ago, and in my judgment the mistake that has been made has been made by the Commission in supposing itself to be a court instead of recognizing its real duty as that of discovering offenses and aiding in their correction. I have heard gentlemen say frequently here that this law was satisfactory up to ten years ago, and at that time the courts decided that the Commission did not have the power to fix a

rate. I do not understand that the Commission ever arrogated to itself that right in the early days.

I do not believe there was a man who voted for the bill—and I was one of them—who ever thought that they had the power under that bill to establish a rate. They did have the power, it was supposed, and no one doubts it now, to say that a rate was unreasonable, and to enjoin its correction.

But the trouble has been that when the matter comes to the courts the evidence is in the hands, largely, of a class of gentlemen who will not expose it. It is in possession, first, of the railroad companies, and then, as one gentleman here explained the other day, it is in the hands of shippers who have kindly and pleasant relations with the agents they would punish if they divulged what they knew, and hence these gentlemen simply say that they will not do it. Suppose, now, that we should remedy that difficulty; give us your opinion, if you please, as to whether or not that would be effective?

Mr. HIGBEE. I think it would be effective, but I think it would be very much more cumbersome than the plan which we are proposing, because it would impose upon individuals the trouble of bringing individual suits at law.

The CHAIRMAN. Every man has that to-day, now, when he is aggrieved, and there would be this condition which would make it unusual that there would be this favoritism to the class of aggrieved citizens that the Government would hunt out their proof for them, whereas in the case of an ordinary grievance you have to hunt up your proofs for yourself.

Mr. HIGBEE. Would it not necessitate the bringing of a great many suits for the same purpose?

The CHAIRMAN. I should think not. I do not think that usually happens. The whole human family who live within the limits of the United States may violate the law. If an occasional punishment of one man deters hundreds of men from the like offense, why would it not in this case?

Mr. HIGBEE. I assure you, sir, that I have no pet scheme. I simply want the evil remedied.

The CHAIRMAN. I simply wanted to get your opinion as to that scheme, if it would accomplish the purpose. I do not know that it will work well, but you gentlemen who are practically engaged in this matter I think should know.

Mr. HIGBEE. My impression is that it would not be as effective as the one we are speaking of.

The CHAIRMAN. It would avoid some dangers that beset the remedy you advocate, of putting the immense power, for instance, of controlling this ten or eleven billions of wealth into the hands of a very few persons.

Mr. HIGBEE. Even placing that power there, Congress has still the power at any time, if this power is abused, to remedy that. The President has the power of removal, and we have put great power into the hands of a few men occasionally. The President has power in his one hand which is beyond and away above the power that we are asking for these five men, and he is in for four years.

The CHAIRMAN. No; the President has the power of removal in case of misconduct.

Mr. HIGBEE. Congress has the power to repeal the law, and the



President has power to call Congress in extra session within a very few days. We think that it would be perfectly safe. We are simply striving for the best that we can get. We do not expect ever to reach a perfect condition.

The CHAIRMAN. I do not assume that that would be a remedy, but I simply suggested it to you.

Mr. HIGBEE. I have tried to answer your questions to the best of my ability, and if there are no further questions, I thank you, gentlemen, for your kindness in giving me this time.

The CHAIRMAN. We are certainly very glad to have heard you.

#### STATEMENT OF MR. S. T. HUBBARD.

The CHAIRMAN. You heard the question which I just asked your predecessor?

Mr. HUBBARD. Yes, sir.

The CHAIRMAN. Will you answer that question?

Mr. HUBBARD. I would like to have it, the substance of it, reread, as it is a pretty long question, Mr. Hepburn, and involves a good many points. I think that all I have heard of all the questions that have been asked by the committee were very interesting and instructive to me, and they have been no doubt answered and thrashed over in the adoption of this interstate-commerce law.

The question you asked first, as to whether a man would be willing to invest his money in an enterprise which falls under the laws of the United States or States which regulate the traffic can be answered simply by experience. The different States have railway commissions which have fixed rates on the goods transported over the lines; the other States granted charters, and that has not prevented railroad building in those States. I do not know whether the State of Ohio has such a commission.

Mr. TOMPKINS. The State of Ohio has a statute fixing the maximum charges for freight and passengers and also has a commission.

Mr. HUBBARD. Since that time I have myself invested a sum of money in Ohio, from Sandusky down to Zanesville. I have lost it, of course—

Mr. MANN. But that is all subject to correction by the courts before the rates are put into effect.

Mr. HUBBARD. The rates are put into effect, as I understand the decisions of the railroad commissions, and they have gone into effect, and the shippers have paid them and have appealed—or the railroads have appealed—to the State courts for decisions on those points. If my memory serves me correctly, that has been done in Texas, and the Nebraska rate case is a decision in that line, if I am not mistaken.

Mr. MANN. In every one of those States the railroad companies can file a bill for injunction in the United States courts and enjoin the putting into effect of these rates until the courts have passed upon the reasonableness of the rates. This bill that you propose—whether that is constitutional or not is another question—provides that rates shall be put into effect before the court has an opportunity of passing upon them.

Mr. HUBBARD. My understanding of this bill is that it gives the Interstate Commerce Commission the power to carry out the purposes of the interstate-commerce act and enforce their rulings at the start.

Then, if a ruling is wrong, it is carried into the courts, but it maintains its position as a legislative enactment, as you might term it, until it is decided by the court. At the present time the rate is made and the shipper objects to it, but he pays it and carries it into the court for a decision. Is not that the difference?

Mr. MANN. At the present time a rate, of course, does not go into effect until the court says so, if the carrier appeals to the court. Let me understand. Under this bill it is my understanding that the Interstate Commerce Commission, upon complaint, makes an investigation and decides what the rate ought to be, and thereupon the railroad company may appeal to the courts, but meanwhile the rate shall go into effect, unless the court, by special order, finds that there is a plain mistake. Pending the appeal to the court the rate shall be in force and effect.

Mr. HUBBARD. Yes, sir.

Mr. MANN. It takes about how long for a case to go through the Supreme Court of the United States?

Mr. HUBBARD. I do not know, sir.

Mr. MANN. Most of the gentlemen who have appeared before us have assumed to know, and assume that it takes three or four years.

Mr. HUBBARD. I have never had a case in the Supreme Court of the United States.

Mr. MANN. It is quite certain that under ordinary circumstances the Supreme Court of the United States would not pass upon a question short of two years, and by that time the order would have expired; and thereupon the Interstate Commerce Commission, before the first case is disposed of, can make a new order, which can stand in force pending an appeal, and through that process they can go on making rates forever, notwithstanding any appeals to the courts.

Mr. HUBBARD. I understand that this bill would make the rulings of the Interstate Commerce Commission of the same weight as a ruling of the Treasury Department. If I am an importer, and import goods and pay the duty on them, I protest to the Treasury Department, and the Treasury Department states that that is a ruling, that that is the rate——

Mr. MANN. Yes.

Mr. HUBBARD (continuing). And I pay that money, that duty, and then I appeal to the courts, and until the case is decided the Treasury Department retains that money.

Mr. MANN. And if the case is decided against the Government, you get the money back.

Mr. HUBBARD. Yes, sir.

Mr. MANN. But if this other case is decided against the Interstate Commerce Commission, the railways are out the money. They do not get it back.

Mr. HUBBARD. That is true, but that is a matter which is not impossible of remedy.

Mr. MANN. How would you remedy it?

Mr. HUBBARD. If the decision of the Interstate Commerce Commission was appealed from by the railroads, it is perfectly possible to provide that the rate of freight shall be paid and the money shall remain—I do not know the legal term, in trusteeship or custody—until the question is decided.

The CHAIRMAN. In order to be just you would have to apply that payment to every other transaction of like kind.

Mr. HUBBARD. Yes, sir.

The CHAIRMAN. Then, what would be the benefit to the shipper. He is out his money.

Mr. HUBBARD. Very true, he is out his money.

The CHAIRMAN. And you have got to burden both with this double system of accounts.

Mr. HUBBARD. I say it is not impossible of remedy, and I simply suggest this in an offhand manner.

The question the gentleman asked me was, that the Treasury of the United States was always here, and the importer could recover the money from the Treasury of the United States the moment he got his decision, but the railroad did not know that the shipper would always be there, and therefore did not know if the money could be returned. That was the point the gentleman wanted to make.

Mr. MANN. What would you think of it if the importer should fix the rate upon the goods and then give the importer an opportunity to appeal to the Supreme Court of the United States—to the courts—and have it passed upon in four or five years; but meanwhile the importer must pay the duty upon the goods, with no possibility of ever recovering it back. That would be exactly analogous to the proposition you have made in regard to the railroads.

Mr. HUBBARD. I hardly think so. The rates are fixed by legislative enactment.

Mr. MANN. They probably do not know any more about their rates than the Treasury does about import business.

Mr. HUBBARD. That is true; but the power has already been delegated, as I understand it, to the commissioners in the different States to fix the rate, and the States have not found that it is highly objectionable.

Mr. MANN. But in every case where it is fixed by the State, it is subject now to the correction of the courts. Nobody questions it.

Mr. HUBBARD. Would not these rates be subject to final correction by the courts?

Mr. MANN. After the shippers had obtained the benefit of the rates, the court might decide that those rates were not proper rates, but meanwhile one of the parties is absolutely out.

Mr. HUBBARD. Yes, sir. At the present time the shipper pays the rate, and he sues under the interstate commerce law, and he carries that onus.

Mr. COOMBS. You would like to vest the Commission with judicial functions, would you not?

Mr. HUBBARD. Subject to revision, as provided for in the bill.

Mr. COOMBS. I understand in fixing these rates they would go into effect immediately, pending the appeal. Would that be by reason of the exercise of a judicial function or an executive function on the part of the Commission?

Mr. HUBBARD. I should think that would be in the nature of an executive function rather than a judicial one. It has both bearings, but I should judge so.

Mr. COOMBS. Have you ever studied the constitutional feature of that provision?

Mr. HUBBARD. The rates are fixed by the legislature, as I have just said; it it a legislative function.

Mr. COOMBS. The legislature, though, can fix an unreasonable rate?

Mr. HUBBARD. I beg your pardon. They have the power to fix——

Mr. ADAMSON. Fixing rates would be really a legislative function?

Mr. HUBBARD. Yes, sir.

Mr. ADAMSON. Delegating the power of legislation to the Commission when we justify them in prescribing rates which the railroads are bound to conform to.

Mr. COOMBS. Inherently it is a legislative power; however, you want to vest the Commission with judicial functions? Now, do you propose to invoke one of those judicial functions in promulgating these orders and fixing the rates, after determining by the evidence what the rate should be? Would you do that in a judicial proceeding or just simply a summary matter?

Mr. HUBBARD. I think that, of course, is a matter which the commission would have to——

Mr. COOMBS. That is an executive act?

Mr. HUBBARD. Yes, sir.

Mr. COOMBS. Now, if you could do that, why would you want to vest the Commission with judicial functions?

Mr. HUBBARD. Why? In order to carry out an executive act there must be some power to carry it out.

Mr. COOMBS. If you wanted to carry out an executive order you would have to go and get a judgment on it. I do not imagine that any court would get out an execution on some executive order of somebody.

Mr. HUBBARD. No, but I think the order of the Commission——

Mr. COOMBS. I would like to get a clear understanding as to what the idea is as to the power of this Commission.

Mr. HUBBARD. The Commission has, under the present ruling of the Supreme Court, the right to fix a rate, as the chairman says.

Mr. COOMBS. I understand.

Mr. HUBBARD. The questions which you are asking me I think have been ably answered before, before Senator Cullom's committee, which sat for years, and drew the original Interstate Commerce act.

Mr. MANN. Which, by the way, does not anywhere purport to give the Interstate Commerce Commission the power to fix rates.

Mr. HUBBARD. No, sir; I do not think it does; but it was the belief—I am quite at variance with the chairman on that point—that the purpose of the interstate-commerce act as originally adopted was to accomplish what the granger legislation of the West had attempted to accomplish, namely, the avoidance of discrimination between localities and individuals.

Mr. MANN. That still remains untouched in the law.

Mr. HUBBARD. If that remains untouched in the law, how are you going to rectify discriminations between individuals and between localities, unless you give the power to some one to do it?

Mr. ADAMSON. If we do summarily assume here to delegate to the Commission the executive function of fixing rates and the judicial function of hearing and determining causes, and delegate the legislative function of enforcing rates, thus violating the Constitution, which says that the three departments shall stand separate——

Mr. COOMBS. And that you can not take a man's property without due process of law?

Mr. ADAMSON. That is another provision.

Mr. MANN. What is there in this bill which shall prevent discriminations between individuals in rates?

Mr. HUBBARD. I believe this bill gives the power to the Interstate Commerce Commission, after investigation and decision, to issue an order that the rate from a certain place to a certain place shall be so and so.

Mr. MANN. That would be simply to make a schedule rate?

Mr. HUBBARD. Yes, sir.

Mr. MANN. What is there in this bill that has a tendency to punish the giving of rebates or the giving of a lower rate to someone?

Mr. HUBBARD. There is an express provision in the bill for that purpose.

Mr. MANN. I have not seen it; I have not seen any provision in the bill which—

Mr. KERNAN. Yes, sir; that which forbids the shipper from shipping at any except the regular rate. That is one of the provisions in this bill which is new. The carrier can be prosecuted and punished, but the shipper never has been liable to any punishment or penalty for shipping or attempting to ship at less than the published rate. That is provided for in this bill and is one of the essential things in it. We want to stop shippers from cheating as well as the railroads.

Mr. MANN. You want to stop the briber as well as the bribed?

Mr. KERNAN. That is a provision in this bill, to punish the man who attempts to, or who does, ship at a rate less than the published rate, just as it punishes the carrier for doing the same thing.

The CHAIRMAN. Does not that simply add another incentive to secretiveness? As it is now, the shipper can not be punished. Therefore there is no reason for his not divulging the information against the carrier, except his own personal interest.

Now, by making it an offense on his part, you put an incentive in the minds of the two persons who must know about the violations of the law to shield one another.

Mr. MANN. And you give each an opportunity to decline to testify for fear of incriminating himself.

The CHAIRMAN. I wish you would tell us, if you have studied this bill, how the railroad, under this bill, would protect itself against confiscation of its property if the Interstate Commerce Commission chose to make rates so low that it would be a confiscation of its property?

Mr. HUBBARD. That is a question which is beyond my capacity to answer. I think you had better ask my friend, Mr. Kernan here, as to that. He has been upon the New York State commission, and his recommendations were largely adopted by Senator Cullom's committee on that question.

If there are no further questions, Mr. Chairman, I thank you for your courtesy.

#### STATEMENT OF MR. JOHN D. KERNAN.

Mr. KERNAN. Mr. Chairman, the gentleman has referred to the fact that I had some experience of these questions. From 1883 to 1887 I was the chairman of the New York State commission, a commission

that acted under the Massachusetts idea of having power to investigate and ascertain the facts and spread them before the public, and by giving to the injured party possession of the proof and by invoking the aid of public opinion upon situations where the railroads were doing wrong, seeking in that way to accomplish, without the exercise of arbitrary power, a regulation, a real and fair adjustment of disputed questions between railroads and shippers.

And during those four years—the time when I resigned was in 1897—this question of the interstate-commerce bill and the interstate-commerce law was constantly obtruding itself upon the attention of every commission throughout the country, and the necessity of some Congressional legislation to reach that vast mass of commerce which could not be reached by the States was a subject of constant study and investigation and talk and pooling, and all these questions were at that time being investigated and thought about as remedies for the acknowledged evils which arose in the interests of railroads, seeking, of course, opportunities to make what they could, and the shippers seeking advantages at all points, low rates and just rates.

At the time Senator Cullom's committee was appointed it opened its sessions at New York City, and then went all over the United States and spent the entire vacation season in hearing these questions, such as are before you, discussed. They honored me by asking me to come before that body, and I think I appeared as the first witness and talked for two or three days, after having studied these matters as well as I could. At the close of the hearing, and subsequently, Senator Cullom wrote me asking me to draw a bill in accordance with the ideas discussed, and I drew the bill which the Senate virtually adopted.

I did not believe that it was wise to legislate at all upon the pooling question at that time. Pooling was under common-law prohibition to such an extent that the railroads could not enforce pooling agreements in the courts between themselves; and I believed they were working toward what is now being accomplished in another way, that is, working toward some sort of arrangement among themselves which should prevent competition which impaired their usefulness and depleted their revenues beyond the point which they ought to receive, and they were working toward a uniform classification throughout the United States, and toward rules and regulations as to the interchange of interstate traffic which were desirable.

And on the other hand the far-reaching effects of pooling appeared to me to be so great as at that time not to justify with the experience that there was in this country anything which went to the extent of legalizing the authorized pooling. My opinion was that they ought not to do anything in regard to that at that time, but of course to take the safeguards which would be best upon experience, and as to which we had some experience to know what we were doing, and so to follow the English acts as to the requirement of reasonable rates and the prohibition of unjust discriminations; and the third section, which provided that localities and individuals should not be favored in any way by special rates. The Senate adopted that bill virtually in that form as being the law which affected the situation, and beyond that appointed a commission for the purpose of investigating and determining, as I believe, at that time, the subjects before the courts for legislation.

Now, the House, you know, under the leadership of Mr. Reagan, inserted it in this bill. Without going into any details about rates, and

all that, the situation about rates was disposed of in many respects by the interstate-commerce law. I think much of the discussion here was forecast by them upon many questions, and I think if you gentlemen will take the reports of the Cullom committee you will see that many of these questions which we are now discussing were at that time supposed to be settled, and it was believed that there was no remedy left for the purpose of correcting the evils that existed, and these questions between shippers and the carriers, except the passage of the interstate-commerce law and the creation of the Commission as a special tribunal for the purpose of hearing and deciding these questions, and to a certain extent—I will point out afterwards how far—as to rates.

Now, I will not go into the question of the courts further than to say, the Interstate Commerce Commission—the representative of that Commission—pointed out that the courts and the remedies of courts, open and available to shippers or to localities that were suffering from unjust discriminations in rates, or from too high rates, had ceased to be a practical source of relief, owing to the vast growth of the railroads, and owing to the vastly changed complicated situation which arose in reference to these questions. The procedure of all of our courts, mind you, was based upon the questions which arose when the stage coach was the great means of transportation in England and this country, and those methods of procedure are, therefore, as far behind the present necessities of the tribunal to pass upon them as the locomotive and its train to-day, and its capacity of moving freight in vast quantities at a time, is beyond the conditions that existed when the stage coach flourished.

So that in many of these questions, I say, you can regard the interstate-commerce act as deciding that the time had come when the common-law remedies of the courts had ceased to be sufficient for the protection of the public against railroads upon these questions—for the speedy decision of these questions between the railroads and the public—and that the experience of 20 or 30 States up to that time had been virtually adding to the conclusions and had finally reached that as a conclusion; that it was necessary to have some special tribunal of men whose time was devoted to the study of these questions, in order to have anything practical in the way of a body that could reach a speedy conclusion.

Now, I have had a good many experiences before the Interstate Commerce Commission. I have been employed by boards of trade and many bodies of that kind. I have never been for the railroads, but always on the other side of the question. But in all of those cases, up to the time that the Supreme Court of the United States made the decision—which was against the unanimous opinions of the courts below, mind you—in 1897, ten years after the act was passed, neither the Commission nor the railroads, nor anybody else, took the position that they did not have the power to fix rates to the extent that we now ask that it be given to them. The orders of the Commission all ran in that way, that they found that the rate complained of was unreasonable to such an extent, and that the carriers should cease and desist from charging said rate, and should thenceforth cease from charging the said rate.

That was never questioned until the case which I carried there to the Supreme Court of the United States, and argued there twice, "The import rate case," and then also in the "Social circle case;" and right

here I may say that that includes the question whether the inquiry whether rates are reasonable or not is a judicial act. That is, whether the inquiry before the Interstate Commerce Commission, whether a rate is or is not reasonable, is a judicial act, and the Supreme Court says, "But to prescribe rates for the future is a legislative act." So that you have in this Commission a combination of the duty of saying, first, whether the rate is fair and reasonable, and then, second, as a part of their order, what the rate shall be for the future.

So, under the United States Supreme Court's decision, you have a delegation of the sole legislative power of letting that Commission say what for the future shall be the rate; and whether that is a dangerous grant of power, whether it exists, whether it was originally designed by the interstate-commerce act, is a question. The act has failed for the lack of that power up to the present time to accomplish the result intended.

Mr. ADAMSON. Do you think that Congress can delegate that power?

Mr. KERNAN. The Supreme Court holds that they can.

Mr. ADAMSON. That Congress can delegate it?

Mr. KERNAN. Yes, sir; they hold it in all its fullness in reference to all these laws, in reference to Texas and these other States. The laws have been brought up, for instance, in the Texas case, where the order of the Texas commission was appealed to the Supreme Court of the United States and they reversed the order and held that it violated the Constitution in taking property from the railroads. That is, it was decided in that case that the commission under its power to fix rates could not confiscate; they can not fix a rate that is lower than affords a railroad a reasonable return.

Mr. ADAMSON. That was a State commission?

Mr. KERNAN. Yes, sir. In that case, however, Congress, without—

Mr. ADAMSON. Most of these States have a constitutional provision authorizing the railroad commission—

Mr. KERNAN. Yes, sir; but they hold that it is a legislative function that can be delegated. The Supreme Court of the United States has held that proposition, and the interstate-commerce act has never been questioned by the Supreme Court. They simply say that Congress has not given the Interstate Commerce Commission that power, but it has been held positively that the Congress, or the legislature of a State, can delegate that portion of its power which authorizes it to fix rates for the future.

Mr. ADAMSON. Congress can fix rates for the future?

Mr. KERNAN. The Supreme Court of the United States has held that Congress itself, and no other power, can fix a rate for railroads which is not subject to judicial review. In order to ascertain whether it violates the Constitution in putting a rate so low as to mean a confiscation of property—

Mr. COOMBS. Here is the question: Supposing we give the Commission judicial functions, would those judicial functions conferred meet the requirements of the law, and permit that Commission to determine those questions in a manner from which there would be no appeal to other courts?

Mr. KERNAN. I have said that Congress itself can not fix a rate which is not subject to judicial review. Congress can not delegate any power which it has not itself. It can delegate to the Commission



the judicial power to determine whether a rate complained of is fair or not, but it will be subject to a review and decision by the courts.

Mr. COOMBS. It is a quasi judicial power.

Mr. KERNAN. Is not that quasi judicial?

Mr. COOMBS. It is a judicial power which pertains to it. It does not make a court of them.

Mr. KERNAN. Not in that sense. The Supreme Court says: "Congress has said that the Commission's power is in the nature of a judicial power"—quasi judicial.

Mr. COOMBS. Yes, sir.

Mr. KERNAN. And if you go further the Commission is authorized to prescribe rates for the future. There you are delegating to the Commission a part of the legislative power that you exercise, but you can not delegate it to be exercised by the Commission in any other way than you would exercise it yourselves, and necessarily its exercise will be always subject to judicial review. Whether a rate fixed is right or not it is always to be subject to review.

Mr. MANN. This bill, of course, provides for a judicial review, or rather method of review, of the action fixing rates.

Mr. KERNAN. Yes, sir.

Mr. MANN. Now, these gentlemen coming here representing business and shipping interests have the impression that that is the only method of reviewing the rate fixed by the Interstate Commerce Commission, and until the courts in that method may have decided that those rates are unreasonable the rates shall remain in force. What do you say about that?

Mr. KERNAN. Why, I understand the Nelson-Corliss bill to prescribe that a rate fixed by the Commission shall be fixed as though it had been done by yourselves——

Mr. MANN. Yes.

Mr. KERNAN (continuing). Subject to the right of the railroad to adopt the legal method provided in this bill for reviewing, or subject to any other common-law method that exists.

Mr. MANN. That is what I wanted to get. Has Congress the power to say that the courts shall not entertain original jurisdiction of a suit for injunction?

Mr. KERNAN. An act of Congress of itself in that regard is never construed as depriving the courts of any jurisdiction inferentially. Now, there is nothing in this except an inference that it is the only method.

There is nothing in this bill to the effect that this shall be the only method. I think this bill leaves it open to the railroads to say upon attack by a decision that a certain rate is unjust; that they can pursue this method for obtaining obedience to it or any other common-law remedy of the United States court for that purpose.

Mr. MANN. So that, as a matter of fact, in your judgment, if this bill became a law, the railroad companies would have the same rights in court to prevent the putting into operation of tariff rates fixed by the Interstate Commerce Commission that they now have to prevent the putting into operation of rates fixed by a State commission?

Mr. KERNAN. Yes, sir; they would do exactly as they have done. As I told you, during the ten years during which I was engaged in these questions under the first law, the railroads never questioned the fact that the order of the Commission was just what we ask that it shall be under this law.

Mr. RICHARDSON. Is not the effect of that bill this, that while the courts are reviewing the question of the reasonableness or unreasonableness of a rate fixed by the Commission the railroad is losing revenue while the order of the Commission is in effect?

Mr. KERNAN. Yes, sir; they are losing revenue wrongly.

Mr. RICHARDSON. Because ultimately the court hold that a rate is just?

Mr. KERNAN. Yes, sir.

Mr. ADAMSON. Don't you think, as a lawyer, that we could render the public a greater service in any other way by facilitating and expediting hearings regarding the questions growing out of transportation?

Mr. KERNAN. That was all gone into by the Cullom committee. Are the remedies in the courts sufficient to protect the people?

Now, the reason for the establishment of the Interstate Commerce Commission was because after investigation that able committee reached the conclusion, and so reported, giving their reasons at great length in the report, that the remedies in the courts had become so obsolete and difficult of enforcement that there was no protection for the shippers in that direction.

Mr. ADAMSON. Can not the law provide for expediting the cases?

Mr. KERNAN. I will give you an instance of an expedited case, beginning and going clear through to the Supreme Court of the United States, the "import-rate case," a very important case. The case was brought by the board of trade, the transportation and commercial exchange, and the Philadelphia Chamber of Commerce, of Philadelphia, against 28 railroads, the Pennsylvania Central, and all these lines to the West.

That was begun in 1898. In the first place, it was begun against about 15 railroads, and then these additional parties were added because it was found that the connections with the others were affected, and they came in as parties, and then the Commission itself found that any order they might carry would reach out and affect other railroads; so we had to wait until we got the defendants all in and got their defense in. Now, I got a decision in favor of my company in that case. I need not go into what it was, but it was to the effect that inland rates between the seaboard and the interior should be the same for foreign and domestic traffic. We found that the Texas Pacific took dry goods, if you please, on a through bill of lading from Liverpool to San Francisco at 80 cents a hundred and on their inland bill from New Orleans to San Francisco their tariff rate was \$1.20 for the same service for goods shipped at New Orleans. Our contention was that the inland traffic must be charged the same—that they must make the same tariff for inland as well as domestic traffic.

In the first place, that was designed to protect the manufacturer of American goods. If the foreign manufacturer could ship his goods on a through bill of lading at that much lower rate, his goods would come in, and the manufacturer, for instance, of clothing in New York City would be at that much disadvantage, and the difference in rate would be in many cases sufficient to practically wipe out the tariff laws. That was the point I was fighting for—the same rates for inland traffic between the seaboard and the interior for like service. The Commission decided in my favor.

Mr. MANN. How long was that pending before the Commission?

Mr. KERNAN. That took the Commission from December 5, 1899, to January 29, 1891. They held hearings all over the country and took an immense amount of testimony, and you, gentlemen, if you will go through a series of hearings of that kind, could imagine what it is to go into that question of rates.

Mr. ADAMSON. That was fourteen months.

Mr. KERNAN. Yes, sir. Now, it was before the Commission, and we had hearings and pushed it all the time, and we had San Francisco in, and New York, and Philadelphia in; and all their different conflicting interests upon that subject had to be heard and reconciled in order to fix rates.

Mr. ADAMSON. In that case?

Mr. KERNAN. Yes, sir; in a case involving that. You can imagine in a case involving the import business of the United States and involving a thorough investigation of conditions in respect to it, that it would take a great amount of time.

Mr. ADAMSON. That probably is the most important case that has ever been decided relating to the interstate-commerce traffic.

Mr. KERNAN. I should imagine it may be. Some of the railroads did not obey the decision of the Commission. Eighteen of these roads obeyed the orders of the Commission at once, including all the systems running from New York west. They all said that the decision was right, and they obeyed it. Ten of the roads, however, kicked, and of those that refused to obey the decision the Texas and Pacific was the principal one.

Then the Commission employed me to bring an action and push it as hard as I could, and get a decision against the Texas and Pacific, and those roads who refused to obey their order, and that matter was begun. I began that action for the Interstate Commerce Commission, mind you, on January 19, 1892. A plea to jurisdiction was first inserted, before they answered. That was overruled and decided in favor of the Commission. A motion for argument was made and denied. Then, after the hearing of November 26, 1892, it was decided again in my favor, and an injunction was granted against the railroad compelling them to comply; and then in December, 1892, the same judge granted an appeal. That is a remedy which is open to all of them—

Mr. ADAMSON. That is the very point that I was making to you, that unless we do provide for expediting the matter in the courts—

Mr. KERNAN. This was all expedited. There was no trifling. There was no trouble in getting hearings as soon as there was a session of the court, but you know how it is with the United States circuit and district courts. In the State of New York we have two sessions a year of the circuit court, and that does not afford any opportunity for speedy hearings even there. I imagine that in other parts of the United States hearings of the circuit and district courts are much more rare. And you go to the southern part of the State of New York and look at their calendars—10,000 cases on there, I think, of revenue cases alone. You can not get a revenue case heard under five years. But we got it expedited, this case being important.

Then they granted a motion staying the order pending the appeal, and I think that is an ample protection to the railroads always, in any close case, in any case where there seems to be doubt about the justice

of an order made by this Commission. The circuit courts of the United States and the district courts always stay pending an appeal.

Mr. MANN. That is not a provision of this bill.

Mr. KERNAN. It is a provision of this bill substantially; yes, sir.

The CHAIRMAN. Oh, no.

Mr. KERNAN. That is, the order shall go into effect unless a stay be—

Mr. MANN. No question of doubt be raised in it. In any doubtful case—

Mr. KERNAN. I am coming to that.

The CHAIRMAN (reading):

Either party may, within thirty days, appeal from the judgment or decree of the circuit court to the Supreme Court of the United States; but such appeal shall not operate to stay or supersede the order of the circuit court.

There is the same provision with regard to an appeal from the Commission.

Mr. KERNAN. No appeal does stay, your honor, in all our legal proceedings; the appeal does not stay proceedings. You have to get a stay in one of two ways—

The CHAIRMAN. That evidently means that there shall be no stay, in any way.

Mr. KERNAN (continuing). By supersedeas bonds—

Mr. MANN. An appeal, then.

Mr. KERNAN. No, sir. In New York City no appeal stays a proceeding except in one of two ways—in money cases a bond and in equity cases an injunction. You can get it upon application to the court. However—

Mr. MANN. I practice law in a common-law State—of course no one can keep up with a code State—where an appeal always stays proceedings, if you get the appeal.

Mr. KERNAN. Now, I want to say that there is one place in this bill—

The CHAIRMAN. Before you pass from that, you say there are in New York two methods of procuring a stay. One is by the filing of a supersedeas bond and the other is by the process of an order of the court. Now, does not this language cover both of these methods?

But such an appeal shall not operate to stay or supersede the order of the circuit court.

Is not that a prohibition upon any court, so far as you can prohibit the court, to grant a suspension of that order in any way, either by a writ of injunction or by the filing of a supersedeas bond?

Mr. KERNAN. I do not think I understand the act, your honor, if that is so.

The filing of a petition to review an order—

The CHAIRMAN. You have explained to us that in New York there are two methods of procuring a stay.

Mr. KERNAN. Yes, sir.

The CHAIRMAN. One is by the injunction and the other by the filing of a supersedeas bond. The filing of a supersedeas bond can not be done under this act at all.

Mr. KERNAN. Then there is no remedy of that kind to the railroad at all.

The CHAIRMAN. If those are the two methods now by which super-

sedeas results are obtained, if they now exist and those are the two, are not both of them superseded by this act?

Mr. KERNAN. What do you do with the language, "The filing of a petition to renew an order shall of itself suspend the effects of such order for thirty days?"

The CHAIRMAN. Yes, sir.

Mr. KERNAN (reading):

And the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

Does not that leave any remedy open?

The CHAIRMAN (reading):

If upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise.

Mr. KERNAN (handing copy of Corliss bill to Mr. Richardson). I want the committee to see that I have marked those words to be stricken out. In other words, I do not think that the eminent jurisdiction of the United States courts to grant stays pending appeals should be interfered with by language which requires, as this does, that they can not exercise their well-known power of staying during appeals unless it "plainly appears," and so forth. That would be changing the whole method of proceeding in the United States courts. That would be, in effect, prohibiting that court from protecting the railroads under the ordinary circumstances under which they would protect a suitor. I do not think those words ought to be put in.

Mr. MANN. How much have you marked there to be stricken out?

Mr. COOMBS. All the witnesses who have appeared before us have proposed that that should be put in there. That has been the burden of the song of all of them—that that is the remedy that has been sought.

Mr. KERNAN. I do not know; they were laymen. I am a lawyer. I do not know that my opinion is any the better for that.

Mr. RICHARDSON. That has been the chief objection that the committee has been finding with this bill.

Mr. MANN. What would you strike out?

Mr. KERNAN. I would strike out from the word "also," in line 11, on page 6 of the Corliss bill, down to the word "suspend," in line 14. Then it would read:

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending shall suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

The court keeps its ordinary jurisdiction to protect a suitor who makes any complaint against a decision of the Commission, with its ordinary power of protecting him by a stay.

Mr. COOMBS. That removes one of the difficulties before the committee.

The CHAIRMAN. Then you would have to modify in some way the language, beginning with the word "but," in line 19. You certainly would have to modify that language.

Mr. KERNAN. I think not (reading):

Either party may, within thirty days, appeal from the judgment or decree of the circuit court to the Supreme Court of the United States; but such appeal shall not operate to stay or supersede the order of the circuit court.

I do not propose that an appeal shall stay proceedings but for thirty days, and I propose to leave the circuit court with its power to protect suitors in all cases of appeals by granting a stay pending appeal whenever the appellant requires it.

Mr. MANN. You mean a man to have a right of filing a petition for a writ of error in the supreme courts in order to stay the operation of a writ?

Mr. KERNAN. Yes, sir.

Mr. MANN. And obtain an order from the court?

Mr. KERNAN. Yes, sir.

Mr. MANN. So that this order, the judgment of the circuit court—it just goes directly from the circuit court to the Supreme Court?

Mr. KERNAN. Yes, sir.

Mr. MANN. If the order of the circuit court happens to be entered in June of a year, there would be no chance for a stay of proceedings for some time, unless the Chief Justice, as a matter of form, provided for a stay of proceedings in all cases.

Mr. KERNAN. That is true in all cases of appeal in equity cases to the Supreme Court of the United States.

Mr. MANN. I know; but the custom is in every case for the court below to stay the operation of the judgment in order to give the parties an opportunity of getting a stay of proceedings from the Supreme Court of the United States if they are entitled to it. I do not think you will find in any court, under any circumstances, the provision that the appeal of the court below shall take effect within thirty days unless a party gets a supersedeas from the Supreme Court of the United States within that time.

Mr. KERNAN. Yes. Well, I will say in reference to that, without spending time as to how far that changes this rule, that I do not think this bill in any respect ought to put a railroad before the courts in any other position than a suitor always is in against whom a judgment has been rendered, and who wants it reviewed before it goes into effect. He may ask the granting of a stay, and a court may pass upon that.

That is the rule we should have here, and we should be careful in legislation never to go into language which changes the fundamental practice of administration of justice in the courts, otherwise you are making a very dangerous change.

The CHAIRMAN. The hour for adjournment has arrived, and if you will now suspend you will have the stand at 10.30 to-morrow morning.

#### STATEMENT OF MR. WILLIAM R. CORWINE, OF NEW YORK CITY.

Mr. CORWINE. Mr. Chairman, I desire to leave the city, and I would like to have the privilege of going home and sending you what I have to say in written form on behalf of the organization which I represent.

The CHAIRMAN. Very well. How soon can you have it here?

Mr. CORWINE. I will try and dictate it to-morrow. I would like to have it noted on the record that I was here representing the Merchants' Association of New York City, also as a member of the committee advocating the passage of the Corliss bill.

The CHAIRMAN. Very well; your brief, when filed, will be inserted in the hearings.

Thereupon (at 12 o'clock m.) the committee adjourned until to-morrow, April 18, 1902, at 10.30 o'clock a. m.

FRIDAY, April 18, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. I desire to lay before the committee this morning a letter, addressed to the chairman of the committee, from Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, which is as follows:

INTERSTATE COMMERCE COMMISSION,  
Washington, April 17, 1902.

HON. WILLIAM P. HEPBURN,  
*Chairman Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.*

SIR: I beg to acknowledge receipt of your letter of the 16th instant, requesting my associates and myself to present to your committee their views respecting proposed legislation, and to say that some or all the members of the commission will be pleased to appear before your committee on Monday next, the 21st instant, the date suggested in your communication.

Thanking you in behalf of the Commission for the courtesy extended, I remain,  
Very respectfully, yours,

MARTIN A. KNAPP, *Chairman.*

#### STATEMENT OF MR. JOHN P. KERNAN—Continued.

MR. KERNAN. Mr. Chairman, I endeavored yesterday to state that certain propositions seem to me to have been settled with respect to the interstate-commerce law; that the express determination of the courts with respect to the traffic and freight rates must now be regulated by statute so as to protect the carrier in all of its just rights and furnish it with sufficient revenue from its business to give it a proper income on the money and labor invested, and also so as to protect the people against unjust discrimination and too high rates. And the reason of this, briefly, was because the law and its remedies had been found to be unequal to meet the necessities of present business conditions.

The CHAIRMAN. May I interrupt you there?

MR. KERNAN. Certainly, sir.

The CHAIRMAN. If it is going to take you off from the thread of your argument, I will not do so.

MR. KERNAN. I think perhaps I may cover the things which you desire to mention, if you will allow me to proceed.

The CHAIRMAN. This was a matter that you would not cover, because I was going to ask you if you had given attention to the subject you there refer to, a reasonable return on capital invested, and had any information as to what that probably should be, or if there was any way of ascertaining, in the aggregate.

MR. KERNAN. I do not know but you might take perhaps the provision in our New York railroad law, which has been there since the general act in 1850. That provision is that the legislature can reduce

its rates when the clear income of a corporation is 10 per cent on the capital invested. That is our rule there and has been applied in the various investigations we had. For instance, the 5-cent fare on the elevated railroad was a matter that President Cleveland, when governor, refused to approve, although it was approved by the legislature, and we had to have an investigation of the elevated railroad under the statute, to ascertain whether they were earning 10 per cent on the capital, it being recognized that they were entitled to earnings to that extent, and there should be a reduction in the rates.

The CHAIRMAN. Would that be your own judgment from your own observation as to the measure of profits that might be just.

Mr. KERNAN. Well, no, sir. You know that has stood since 1850, and I should think now that the rate of earnings on capital which would be recognized as fair and reasonable under modern conditions would be 6 per cent on the common stock, aside from the fixed charges and bonded indebtedness. Of course that question is always complicated by the question of how much the capital actually is. Where it has been vastly watered, and where its construction account represents but a small percentage of the outstanding stocks and bonds, there always comes in the question as to whether a lower rate of remuneration would not be fair.

But I think in all investigations by bodies and commissions they seldom go back of the proposition as to the fact of what the outstanding issue of stocks and bonds is, and they usually make that the basis of the determination as to whether their rates should be reduced or not, permitting an earning on that of a reasonable amount. That becomes necessary, because if the bonds and stocks of a corporation that has been watered remained in the hands of the original holders, you might in justice reduce the earnings, but where they become scattered all through the country, in the hands of many purchasers, they lose the taint of the original wrong in the watering, and then you have another problem there; you begin then attacking innocent holders of the securities; and therefore I think that you can not do otherwise as a rule than to take the outstanding issues of stocks and bonds as a basis upon which you are to permit them to earn a return.

The CHAIRMAN. Has your investigation of this matter given you any opinion as to who is the owner of what is known as the unearned increment? Does that belong to the public or the corporation?

Mr. KERNAN. No, sir; I never have gone into that. I have always assumed, as I say, and there was great difficulty in assuming any other basis than that unearned increment represented in stocks and bonds, inasmuch as the issue of stocks and bonds have been under the authority of the people and its statutes, and that therefore you can not deprive the railroad and the railroad shareholders of the stocks and bonds of their road, and what may be called that unearned increment. It would kind of seem to me that the people had abdicated their rights to assail the issues of stocks and bonds which they themselves, under the authority of their statutes, have permitted to be made, and they have got themselves into that position where I do not think you can ever deal with the question upon any other basis than that the revenue must be permitted to be earned upon the outstanding stocks and bonds that have been authorized by the statutes.

The reasons for this legislation were because the common law and its courts and remedies were inadequate to afford the protection that



the shippers ought to have against these railroads; second, because State legislation could not reach the subject, and in the third place because competition was no longer a sufficient protection against undue preferences and high rates.

It is an old saying that competition is impossible, and can not be maintained, where combination is possible, and that has been working itself out ever since until we now see that wherever competition formerly existed it has been eliminated for the people as protection against the competing lines by the merging of securities and ownership of each other's stocks, and in other ways.

Now this act, I want to state, as you may know, was based on the English act of 1854, which was very wise in its provisions against unjust discriminations and preferences. That was very wise because it gave us for our initial legislation a guide in the construction of that act which had taken place by the English courts from 1854 down, and I always insisted that that was the only safe way to start, because if we adopted new language, we did not know where it would land us upon its construction by the courts. We took that act as a guide. Then there was the appointment of the Commission, which all supposed to have the power, which it exercised for the first ten years, to fix future rates after an investigation and full hearing given to the parties, which was accepted by the railroads and the Commission and by every one that I know of until the Supreme Court finally decided that Congress had the right to confer the judicial power on the Commission and had the right to confer upon the Commission the power to fix rates, which is a power of legislation, yet it simply had not done so in this act, and while it might be inferred from the provisions of the act, for instance the provision of the act that the Commission should investigate and if it reached the conclusion that the rates were too high should direct the carrier by an order to cease and desist from charging the rate that was found to be wrong—that while the inference might be drawn to that effect, yet the power was too great to be given by implication, and that the court would only recognize it when Congress expressly in an act conferred the power.

Now, this act was found defective in the matter of getting testimony. In the first place, after the Supreme Court of the United States held that the railroad and traffic managers who appeared before the Commission, and others, could not be compelled to testify to the facts, because they might subject themselves to punishment, it was found impossible to get them to testify, and so Congress amended the act to provide that any testimony given before the Commission by any witness should not subject that witness in any way to criminal prosecution, thus removing that obstacle from the path of the Commission; and I do not think that the Commission now needs any more power in ascertaining all the facts. That has remedied the defect of the original law, and I think that meets the suggestion which the gentleman from Alabama has frequently made, as to how you are going to find out about the secret rates.

The Commission has not any difficulty in finding out about the rate. The railroads and the shipper watch these matters very closely, and they watch each other, and they always know when a competitor is getting more allowance from a railroad than they are getting, and then, as in the case recently where the rates in the meat business were shown, they have no difficulty in acquiring all the information that is

necessary. Next came the decision of the Supreme Court holding that the Commission has not this power.

The CHAIRMAN. This move in regard to securing testimony was effected in the amendment of 1893. It is referred to in the bills here—in this last bill, which says:

But all persons so required to testify shall have the same immunity from prosecution and punishment as is provided in an act approved February eleventh, eighteen hundred and ninety-three, entitled "An act in relation to testimony before the Interstate Commerce Commission, and in cases of proceedings under or connected with an act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and amendments thereto."

Now, we come to this next difficulty, that there is no power in the Commission to prescribe a rate for the future, although the Commission find that a rate which is testified to before it in hearings is unjust and for some reason wrong, and that is the reason that a second appeal to Congress is necessary to remove that defect in the law, if it be a defect; or at least if it is not a defect, it was not intended by the Congress in the original act.

I have always supposed that it was intended that that additional power should be conferred upon the Commission, if it can be safely done with due regard to all the parties to be affected by it. There is another thing which I want to suggest to the committee and which they should bring up before the members of the Commission when they see them. I do not think this power of the Commission was ever questioned until it came up in the import-rate case and the social-circle case, which were decided in the Supreme Court of the United States. And, again, there is not any trouble about high rates. The Commission never had any difficulty about lowering rates. The shippers do not care what rates are charged. It is the relation of rates between competitors; that is the thing they want fixed.

I will give you an illustration: I bought a furnace and had it sent up to my country house, 5 miles from Utica. The freight rate was 28 cents per hundred; that, on 400 pounds, was \$1.12. Now, somebody asked me, "Was that high?" Why, taken by itself, I would not say that \$1.12 was too much to pay for bringing that furnace up there, but the rate for that furnace, at the same time, from Utica to Minneapolis was 25 cents a hundred, or 3 cents less for 1,000 miles than it was on that 5 miles. Now, you say that that does not make much difference to me, as a consumer, on one furnace. That is true. But suppose I was a furnace manufacturer at my station, trying to compete with the Utica manufacturer in supplying the Minneapolis market, I would pay from Forestport to Utica—4 miles—28 cents per hundred, and then I would have to pay the additional 25 cents per hundred to reach the Minneapolis market from there.

Why, as business is done in these days, that wipes out me as a furnace manufacturer at that point, and the result is that upon the entire line of that railroad from Utica up there was not a single furnace manufacturer. The "arbitrary," as it is called, which is the rate from a station on a single line to a competing point, was so great as to absolutely preclude men from doing business. If I was a manufacturer at Forestport I would not care whether the rate was 50 cents to Minneapolis or 25 cents; but what I would want to have established would be the relation which my rate would bear to my competitor's at Utica. If I should be charged 3 or 4 cents a hundred miles, that is all right;

but if I should be required to pay 3 or 4 cents for that short haul to reach the customer, that, of course, wipes me out.

You will find in 99 cases out of 100 that the complaint before the Commissioners has not been that the rates are too high. It is all a question of the relation of the rates to be established, and not only between all sorts of competitors reaching common markets in this country, but also abroad. That is the question, and that is why you have got to have a commission, and that is why it has to have power. You can see how difficult it is for courts to deal with that question. There are but six classes of freights.

Mr. MANN. In the case that you stated how would you remedy that? Increase the rate from Utica to Minneapolis and make it 25 cents higher, or make the rate from Forestport 2 or 3 cents a hundred?

Mr. KERNAN. I think it should be both ways there. I think the rate from Utica ought to be higher, and the other way lower.

Mr. MANN. You think that is to the interest of the people of Minneapolis, to increase the rate?

Mr. KERNAN. I do not think the combined rate ought to be very much greater, and I think railroads ought to pay and I think it is good business, and I think if you will listen to some suggestions which I have to make that you will see why I think that an extraordinarily low rate, although it is presumed to be an advantage, if it is not remunerative to the railroad is not a benefit to any consumer or producer.

Mr. MANN. That is a matter of argument. Take the case you cited; how would you remedy that? You have given that a great deal of study; what rate would you make to remedy that?

Mr. KERNAN. I would make the Forestport rate—if the railroad maintained the rate of 25 cents around as its rate—I would add to the Forestport rate a fair addition for the 29-mile haul, comparatively speaking; not pro rata, but a fair addition.

Mr. MANN. Well, that is fair; but tell us how much.

Mr. KERNAN. Now, that is just the difficulty.

Mr. MANN. That is just what I am getting at; what would be the rate that you would make, the local rate, between Forestport and Utica, on furnaces?

Mr. KERNAN. I should want to hear all the railroad traffic managers had to say, and to take into consideration the capitalization, the business and earnings of that line, and in that way reach a conclusion which would afford the railroad a fair return for the service rendered, but it would involve so many elements before the question could be considered that no man could possibly—

Mr. MANN. But you think that the Interstate Commerce Commission, with the consideration of a few days' hearings, would be able to tell better than the railroads, after fifty years' experience, what the rate should be?

Mr. KERNAN. I do not say that. It would be better done by the railroad company if the railroad company acted judicially in the matter; but every man acts for his own interests in the matter, and therefore the railroad manager, in considering the question, does like a great many of us. He looks at one side. And I never knew but one railroad man in this country who was able to take in both sides of the question.

Mr. MANN. Is it not to the interest of the railroad companies to increase the manufacturing interests on their lines?

Mr. KERNAN. You would suppose so.

Mr. MANN. Is it not?

Mr. KERNAN. Yes, sir, it is; and it is bad policy if they do not do it; and yet you would be surprised to go up and down lines which I could point out in New York State to see how absolutely blind they are to that.

Mr. MANN. With all your knowledge of railroad rates—and you have given more study than anybody on the Interstate Commerce Commission to them——

Mr. KERNAN. Oh, no, sir.

Mr. MANN (continuing). Or any man in the country——

Mr. KERNAN. I do not think so.

Mr. MANN (continuing). I will ask you, leaving out Forestport altogether, you are not able to tell what would be the proper rate from Minneapolis to Utica?

Mr. KERNAN. Not unless I had all the facts. I have not got them. I never bothered about my little rate. This is just an illustration of the difficulties, and one of those relative things that has got to be considered and determined.

For instance, you take the question of two farmers living 100 miles from Chicago, one on one railroad and one on another. They are both competitors for the foreign and domestic market. They are on different lines, and those lines are in different States. Now, the farmer at one point is charged for carrying grain to Chicago 3 cents a bushel. The farmer on the other road is charged 1½ cents a bushel. Now, that difference of 1½ cents a bushel, you see, wipes out to a certain extent the business of the farmer who has to pay 3 cents. You can not deal with that situation any way except through the interstate-commerce law, which can bring both of these rates before it and enter into a consideration of these relative rates, and fix them in the proper relations toward each other.

It may be that the interests of one road, and the form of business of one road, may permit a higher rate. If that is so it will have to stand. But it may be that of these rates one is higher and the other lower than it ought to be. Those things have to be met by the power of somebody who has power to fix relative rates, and it is relative rates in this country that are troublesome.

Of course, on the 1st of January, 1900, the railroads changed rates on 854 different articles, and they lowered them on 6 and raised them on the rest of the articles. The increases were from 100 per cent down to 15 per cent. The average was 25 per cent.

Now, after the long period of depression that the railroads have been suffering from I do not think that was an excessive rise in the rates, and the only thing in those rates is that it should be considered by somebody with authority and ability and training to go into the consideration of the relative fairness as between competitors at different points and upon different roads.

In this bill the first section seems to be all right, and there certainly can not be any objection to it. It provides that any carrier who departs from the published rate, or any person who procures or solicits any such departure from the published rates, shall be deemed guilty of a misdemeanor and fined. I want to say here that this act remedies

one thing in the interstate-commerce act which has been a serious obstruction to the carrying out of the provisions of the act, and which meets something which was suggested here the other day. It removes the punishment penalty. If you have a punishment penalty you can not get any information; it is utterly futile. All you get in this act is a money fine, and I think that is a vast improvement in the act.

The CHAIRMAN. What would you say to this remedy for that evil: In case of a secret rate or of a rebate, to compel the company to continue that rate to all other shippers on its line for twelve months?

Mr. KERNAN. It might bankrupt the company. You see you have got to remember——

The CHAIRMAN. It would operate as a fine, and it would operate to give a great many men an incentive to enforce the law and to discover offenses.

Mr. KERNAN. That is true, but everything tends to show me that no remedy is wise in the public interest which would tend to deprive a railroad of sufficient revenue to maintain itself, and to make a fair earning. That is the best public policy for this country.

The CHAIRMAN. Yes, sir; but would not this result: All of these violations of the law are through human agencies, appointed ultimately by the board of directors. Would any man commit this offense where such a penalty was staring his company in the face? He would not last a minute with that directory. He would know that he lost his job instantly.

Mr. KERNAN. Well, I do not know. We find the policy of agents and subordinates taking business at any rate they can——

The CHAIRMAN. Now, there would be some reason for this. They are required to establish a just rate. The very fact that they have established this rate would operate as an estoppel against the complaint; that it is just and right; that they are right.

Mr. KERNAN. I do not believe it is good policy to adopt any remedy that compels railroads to do service for nothing or without remuneration. I do not think it is good policy.

The CHAIRMAN. You are not compelling them to do it. It is of their own volition?

Mr. KERNAN. It is not good policy to permit it, from a public standpoint, without any regard to their pocketbooks. A railroad, to be prosperous and successful, to keep up to the times, and give its shippers facilities, must have earnings to pay its fixed charges and afford a return on its capital.

The CHAIRMAN. Yes.

Mr. KERNAN. And any penalty which would continue to give a cut rate, which would involve a loss to the road, would be bad public policy, even if the railroad would be willing to do it. I think all legislation should be directed to preventing cut rates, not only from the standpoint of the people, but from the point of the benefit of the railroad, looking at it from the standpoint of the public interests. I believe that is sound policy and have always believed it. Every effort should be made to prevent railroads cutting below the rates at all. I do not believe there is any benefit in cut rates.

Mr. MANN. If you will permit me, I asked one of these other witnesses yesterday a question which I should like to ask you. You state that this bill provides for the punishment of any shipper who would maintain cut rates. I have not been able to find that.

Mr. KERNAN. It is on page 2:

Any person, whether an employee or a principal, or a member of a firm or company, or an employee, agent, or officer of a corporation, for any of whom, as consignor or consignee, any carrier subject to the provisions of this act shall transport property, who shall knowingly, by false description, false weight, or false representation of the contents of any package, or by any other fraudulent means obtain or attempt to obtain the transportation of property, with or without the collusion of the carrier, or any of its employees, agents, or representatives for a less compensation than that prescribed by the published tariffs or schedules of rates in force at the time shall be deemed guilty of a misdemeanor.

Mr. MANN. That does not answer my question at all. That only applies to people who obtain lower rates by false representations; for instance, as to what the property is, or as to classification.

Mr. KERNAN (reading): "Or any other fraudulent means."

Mr. MANN. This would not apply at all.

Mr. KERNAN. You give a different construction to it. I assume that that does reach the case of cutting rates, any device or attempt to secure a rate lower than the published rate.

Mr. MANN. Do you think that would cover the case of a shipper who obtains by crime, without any fraud so far as the representations are concerned, a lower rate than the schedule rate?

Mr. KERNAN. I have not given that construction to it.

Mr. MANN. I do not believe you would, if you were on the bench. That section will cover a case where a man brings a box of goods and represents them as being in one classification when they are another thing and in another classification, which is in fraud of the law.

Mr. COOMBS. No, sir; it is a violation of the law whether it is a fraud or not. It does not say misrepresentations.

Mr. KERNAN. It is against and in fraud of the law for the carrier to take business below the published tariff, is it not?

Mr. COOMBS. Fraud has a penal significance.

Mr. MANN. Obtaining a rate by fraudulent means does not apply to a violation of the law.

Mr. KERNAN. Take the first section:

Every carrier, every lessee, trustee, receiver, officer, agent, or representative of a carrier who shall transport or offer to transport traffic subject to this act at any other rate or upon any other terms and conditions than are duly published in accordance with the provisions of the act, or who, by the payment of any rebate or by any other device, departs from such published rate in the transportation of such traffic, or who transports such traffic without having first published a tariff applicable to the same, agreeably to the provisions of the act, and any person who procures or solicits to be done, or assists, aids, or abets in the doing of any one of the aforesaid acts shall be deemed guilty of a misdemeanor.

How about that reaching the shipper who asks for a cut rate? That is the first section, right at the top of the page.

The CHAIRMAN. How would that apply to this condition? Suppose I go and take a box to a station agent in my town. I do not know anything about the rate, and I say "what will it cost me to ship this to Chicago?" He gives me the rate, and I pay the freight. I do not know anything about the relation of that rate to the published rate. Now, suppose that rate is below the published rate—

Mr. KERNAN. Oh, I think the ordinary rule as to criminal prosecutions would apply there. Violations of any act that imposes a penalty must be willful acts, and done with knowledge, and that would be an exception. This act says:

Any person who procures or solicits to be done, or assists, aids, or abets in the doing of any one of the aforesaid acts, shall be deemed guilty of a misdemeanor.

It seems to me that covers the question.

Mr. COOMBS. Then everybody is charged with a knowledge of what the tariff is?

Mr. KERNAN. You mean that in a criminal action every man who commits an act is guilty?

Mr. COOMBS. Yes, sir.

Mr. KERNAN. That does not apply in a criminal case. There must be a willful violation.

Mr. COOMBS. I know; but he is charged, and ignorance is no excuse under the law.

Mr. KERNAN. We would all of us be jailed every day if that were not so.

Mr. COOMBS. You can not plead ignorance of the law, and that principle is applied every day in the law.

Mr. KERNAN. I think that ignorance of the law is always a defense in a criminal action. I think it is never a defense in civil actions or where remedies are involved.

Mr. COOMBS. You are mistaken about that. Before a jury it might be something in extenuation, something that they might take into consideration, but that is never an excuse or a justification. In criminal cases as in civil cases a man is charged with the knowledge of the existing law.

Mr. KERNAN. That may be true, but my understanding of the law is that a man is never punishable for the violation of a criminal statute unless it is done willfully; and if it is done in ignorance of the law, the act is not criminal.

Mr. MANN. Take the case of the transportation from Utica to Forestport of that furnace.

Mr. KERNAN. Yes, sir.

Mr. MANN. Suppose you had thought that rate was a little high, and you had asked the railroad company if it could not charge a lower rate, and the agent had given you a lower rate, a little below the schedule, for instance, a dollar instead of a dollar and a half. Under this section you would have been fined \$5,000; because there is no fine less than \$5,000.

Mr. KERNAN. If it had been shown that I did that with full knowledge of the law and its provisions——

Mr. MANN. You do not think——

Mr. KERNAN (continuing). Then I think I would be liable.

Mr. MANN. But you do not think it would be necessary to show that you had full knowledge of the law? Of course there is not a railroad agent in the world who has full knowledge of the law. The courts even do not have that.

Mr. KERNAN. Then when prosecutions took place they would be discharged. It is only for willful violations of the act.

Mr. MANN. You kick on the rate of \$1.12 and get a rate of \$1, and thereupon you are prosecuted under this section. If it applies to that case, they must fine you \$5,000; no less fine can be imposed. Is not that rather hard?

Mr. KERNAN. If you are right and I am wrong in the application of criminal statutes, that is hard. You are mistaken about that. I do not think the violation of a criminal statute is ever punishable unless it is willful.

Mr. MANN. Then you think that in order to convict a man under

this provision the prosecuting officer must show that the man had knowledge of the law before he committed the offense?

Mr. KERNAN. No, sir; I think the prisoner is presumed in the first instance to have had knowledge of the law; every man is presumed to have that, but I think he may show in defense his ignorance of it. That is a matter of defense. The onus is not on the district attorney to show that the man knew the law. The onus is upon the prisoner to show that it was done in ignorance.

The CHAIRMAN. That is only in mitigation of the punishment. That would be after the trial.

Mr. KERNAN. No, sir; that is on the trial.

The CHAIRMAN. It would mitigate matters after the trial.

Mr. ADAMSON. Ignorance of the law can not acquit a man.

Mr. KERNAN. Ignorance of the law or the statute will acquit a man in a criminal prosecution.

Mr. ADAMSON. That is a new law.

Mr. KERNAN. I maintain that is the law.

Mr. COOMBS. In what State is that in vogue?

Mr. TOMPKINS. How can a man have ignorance of the law when he is assumed to have knowledge of it?

Mr. KERNAN. Take the milk case—

Mr. MANN. Nobody could know whether he had knowledge of the law except the man himself, and all he would have to do would be to come in and swear that he did not have it, and he would go free.

Mr. KERNAN. In the milk case, the Murtagh case, of the Verona cheese factory, there was a penalty for watering milk, and I was employed in bringing the action of the Verona cheese factory against this man, and we proved our case and he proved that the water was put in his absence by his wife and his children, and that he drew the pay for it from the factory, and we claimed that he was liable under the statute, inasmuch as the act of the agent in charge of the business is the act of the principal, and therefore he was liable individually under the act.

The case went to the court of appeals, and they reversed it on the ground that under the statute, notwithstanding he was responsible for the acts done in that case by the agents of the business, he could only be charged by showing his actual knowledge of the violation.

Mr. MANN. Of the fact?

Mr. COOMBS. Not of the law.

Mr. KERNAN. Actual knowledge of the violation.

Mr. COOMBS. That would make him an accessory. He had to have a knowledge of the offense and not of the law.

Mr. KERNAN. It goes to show that he had to have not only knowledge of the fact and the statute, but even on proof of a violation of the statute absence of intent is an excuse in a criminal prosecution.

Mr. COOMBS. The intent goes to the ingredients of the defense.

Mr. KERNAN. If it goes to the ingredients of the offense, then I think it ought to go to the extent of knowledge and willfulness of the violation.

I notice here you might amend that section in that way. It might be provided that the carrier can not be punished unless he willfully violates the law.

Mr. COOMBS. Strike out "willfully" and put in "unlawfully."

Mr. KERNAN. In this first section you can put in there "Any per-



son who willfully" commits these acts. That would remedy that defect, if I am wrong and you are right, and I presume you are, about this other proposition.

Now, the other thing that I want to call attention to which is a very serious defect in the original act, is remedied here. The provision is:

Every corporation which shall be guilty of any act or omission, which if done by an individual would be a misdemeanor under the provisions of this act, shall be deemed guilty of such misdemeanor and shall be subject to the same penalty which is provided against the individual.

Under the present interstate-commerce act the corporation goes scot free. It is not indictable for the offense, and the result is that all the efforts of the Commission have to be directed toward the subagents and employees who do these acts which, under the interstate-commerce act, are punishable.

That has always been a defect in the law, and this amendment provides that corporations should be the ones responsible for the acts, where the acts are done by them or their agents; that they should be made liable and no protection given them. The result of that is that you can not convict the agent before a jury. He can turn around and swear that the corporation did it under its directions and rules, and so forth, and it reaped all the benefit.

Now, that is a good provision, and the next which is proposed, the last to be considered, is giving the Commission the power—

to determine what rate, relation of rates, classification, or other practice should be observed in the future in order to correct the wrong found to exist, and it shall order said defendants to observe the same.

That is to be after a full hearing; "after full hearing had." Of course that should be so. That is right. The hearing should be full and complete before there should be any order entered by which any rate should be changed for the future. And I intend to say more than I have about that; I think that was the original intention of the original act. I know that our Commissioners who appeared before Senator Cullom's committee, and who had been serving for years before State boards who had recommendatory powers, pointed out that our experience had been such as to show that at first, when a commission is new, or in a small State where there is not too much vast railroad business for it to consider, so that its action is lost sight of, these recommendations have power. In Massachusetts they had force for a number of years, and when I was on the New York commission as the first chairman, the first four years of its existence, the first question which came up and which we decided about rates, and in which we reduced the rate to some extent, the newspapers were full of it.

It was a new body, and its decisions were watched and given prominence, and talked about, and there was a focus of public interest upon the railroads upon that subject—as to whether they observed or did not observe the findings of the Commission. If the finding was right the public sustained it, and the railroad was under that kind of bias of public opinion that made them observe it. But after a time we found that the Commission ceased to be an object of much interest in regard to this question; that its recommendations lost power, and now they do not amount to anything there or anywhere else. There is no regard paid to them whatever.

Mr. TOMPKINS. Are you through on that point?

Mr. KERNAN. Yes, sir.

Mr. TOMPKINS. Inasmuch as the general debate must be closed on the floor of the House in a very short time on an important measure, I move that we now go into recess until to-morrow morning at half past 10 at this point.

(The motion was seconded, put by the chairman, and carried.)

Thereupon, at 11.10 a. m., the committee adjourned until to-morrow, April 19, 1902, at 10.30 o'clock a. m.

---

SATURDAY, *April 19, 1902.*

The committee met at 10.30 o'clock, a. m., Hon. William P. Hepburn in the chair.

#### STATEMENT OF MR. JOHN D. KERNAN—Continued.

Mr. Chairman, I want to say that I have looked at the question of law raised by Mr. Adamson yesterday, and he is right about that; that mistake of law does not excuse the doing of a prohibited act. I ought to have said that I have had nothing to do in my life with criminal law and I do not pretend to be an expert on that question. But the distinction in our New York courts seems to be this—and there are a good many decisions on this. In the case of *Gardner v. the People* (62 Court of Appeals), the court uses this language:

The defendants made a mistake of law. Such mistakes do not excuse the commission of prohibited acts. The rule on the subject appears to be that in acts mala in se the intent governed; but in those mala prohibita the only inquiry is, Has the law been violated? The act prohibited must be intentionally done. A mistake as to the fact of doing the act will excuse the party; but if the act is intentionally done the statute declares it a misdemeanor, irrespective of the motive or intent.

I had in my mind that in some instances there were prosecutions of crime where the knowledge of the law had been a question found to be necessary in order to constitute the offense; but those apply only to offenses that are offenses per se and not statutory.

Where there is a statute on the subject the rule seems to be that knowledge of that statute is presumed and the violation of it, regardless of knowledge of the statute, is an offense.

Now, that leads me to suggest that in that first clause there it would be wise to provide that that penalty of not less than \$5,000 or more than \$10,000 should only be imposed on the corporation, and that that should be amended so as to provide that any agent of a carrier or any shipper; that the penalty upon him should be only within the discretion of the court, not exceeding a certain amount, not requiring the court to impose any definite amount. That, you see, would permit a court in all cases of that character to take into consideration all circumstances that went to mitigate the offense, and to show that the party violated the statute, perhaps, inadvertently, and thus to graduate the fine down to a nominal matter.

It seems to me with that amendment to this section it would be all right, and would meet the difficulty and objection presented by Mr. Mann to the effect that the imposition of that penalty of \$5,000, it being fixed, as inexorable, either upon an innocent freight agent, perhaps, or an innocent shipper, or one where the circumstances show no

particular intent to violate the law, that that would be right and make it perfectly fair.

Another thing. Your honor suggested yesterday that perhaps a remedy might be secured by requiring the carrier to continue the cut rate as a public rate, and if that could be confined in its operations to results to the offending carrier, it might, perhaps, afford a remedy; but the difficulty about that is that the cut rate imposed upon one competing railroad requires all of its competitors to make the same rate.

The result would be you would be compelling innocent parties in that case to conform to the cut rate for which they were in no way responsible.

Now, another thing in this bill which is very important—

The CHAIRMAN. How is that operated? I supposed that all carriers from common points do substantially agree upon a rate?

Mr. KERNAN. Yes, sir.

The CHAIRMAN. I think they must do that—

Mr. KERNAN. Yes, sir.

The CHAIRMAN (continuing). In making up their rate tables?

Mr. KERNAN. Yes, sir.

The CHAIRMAN. Are there cases in your judgment where any given company would prefer a lower rate than that and, preferring it, obtain it under this method? If they were content with a cut rate that would be imposed upon them perpetually by the statute, if they would be willing to cut the rate for the purpose of getting that particular rate, why not agree to it in the first instance?

Mr. KERNAN. What is that, sir?

The CHAIRMAN. Why not agree to it with their competitors in the first instance?

Mr. KERNAN. There would be no object in doing that, because then the cut rate being on all of the lines would afford no advantage to one over the other.

The CHAIRMAN. That was what I thought.

Mr. KERNAN. The object of the cut rate made by a road is always to get under its competitors and get business, and if the cut rate was agreed upon by all the roads there would be no advantage in it, you see.

The CHAIRMAN. Do you suppose in the ordinary practice of cutting rates, the cut rate is one that the company could afford to maintain for all of its business?

Mr. KERNAN. As a rule the cut rate is not regarded as remunerative in itself. That is the general railroad custom about it. It is not regarded that rates cut for the purpose of getting business are remunerative, it is not regarded that they will be; it is simply to get the traffic, and having got it hoping to maintain it and then eventually get something out of it.

I want to say another thing about the first section in reference to these offenses, there on page 2, line 2, you might insert "knowingly and willfully," so it will read, "Any person who knowingly and willfully procures or solicits to be done," etc. That would perhaps prevent that section from punishing innocent persons. That might be a suggestion you might think about; whether it might not be well to insert "knowingly and willfully."

Another very important provision of this act is this: The Commission is now authorized to take testimony, and its findings are prima

facie evidence in a court, but invariably when you go into a court with the testimony before the Commission, and the findings of the Commission—I have had it myself a half a dozen times in my own experience—the railroad apparently pays no attention to the fact that the testimony has been taken before the Commission on the part of the complainant.

It withholds its testimony before the Commission and does not give any, in the hopes the Commission will make some mistake of facts or will not get at the facts and that this order will not be of any use. The Supreme Court of the United States has commented upon it in one of its decisions, and has said that that is a very serious evil, and that in some way the railroads ought to be compelled to display their full hand before the Commission. At present when you go into court with the findings of the Commission and the testimony of the railroad company comes in and tries to fight the case on affidavits, which is the most unsatisfactory way of trying one of those issues; you get into conflicts of affidavits you can not have an opportunity to cross-examine the affiant, and thus all sorts of difficulties as to the evidence arise.

In one case I had the most voluminous affidavits come in on behalf of the railroad as to facts, none of which had been presented before the Commission at all. We were in a position where we had to make affidavits, and thus the case became a fight over affidavits, which is an unsatisfactory way to try a case.

This provides that in case of the railroad appearing before the court and desiring more testimony, that then it shall be sent back to the Commission to complete the record. In other words, the place where part of the testimony is taken is the place where the entire testimony should be completed in order that the sequence of facts and the omission of things that have been already allowed, and all that, may be somewhat controlled.

The CHAIRMAN. Right there, if you will allow me. In the procedure, in order to bring about that order to the Commission for additional testimony, you would require the defaulting party or the railroad to make such a showing as the court would require in a motion for a new trial on newly discovered testimony? You would require some such procedure as that?

Mr. KERNAN. I do not think I would make the rule as stringent as that.

The CHAIRMAN. What procedure would be necessary in order to secure the taking of additional testimony?

Mr. KERNAN. Nothing, except a mere desire to take further testimony. I would not make it the rule that applies to cases as to newly discovered testimony. The rule there is that the party must not only show that the testimony has been newly discovered, but that with ordinary diligence it could not be produced in the first instance. If you apply that rule here, railroads might be shut out because—well, they might not choose to attend the hearing of the Commission and put in testimony. I would not for that reason cut them off. We will not accomplish anything in the end of value unless we have all of the facts presented before the Commission and the court to get at what is right about it.

An order based upon personal testimony, an order which is, therefore, wrong in not being comprehensive enough to cover the situation, could not do anybody any good, even although it be one giving a lower

rate or something of the kind. You can not make laws of that kind that operate to control the great laws of supply and demand in trade and rates unless they are based absolutely on all the facts and are right. And therefore there is no advantage in prescribing a rule of procedure which shall cut anybody off anywhere.

Let me call your attention to the language of this: "In case either party desires to submit further testimony," and such testimony could reasonably have been perfected before the Commission, it may instruct the Commission then to certify up that testimony. So it leaves it, if the railroad desires to present more testimony; they do not have to make a case out except to show it is desired.

The CHAIRMAN. In the taking of the testimony before the Commission, would you give them the powers of a court, or simply of a commission taking depositions?

Mr. KERNAN. I would not change the law in that respect as it now exists.

The CHAIRMAN. But what I want to get at is, in your opinion, whether it is given functions in the taking of testimony that a court has—which may exclude, which may pass upon the competency, and all such questions as that—while a commissioner would not; he would simply have to record what was proposed, with the objections.

Mr. KERNAN. Yes; in other words, would you make the Commission simply in the position of a master, without power to rule?

The CHAIRMAN. Yes.

Mr. KERNAN. Without power to report up. No, you can not practically do that. The Commission must have the power to determine as to the competency of testimony. Otherwise do you not see that the conclusion of the Commission would be based upon testimony which might thereafter, you know, be struck out by the court, and you would have no basis for your findings of the Commission. But, of course, in this method suggested and under the interstate-commerce act I assume that the testimony must be competent; it must conform to the rules of law; and in the review by the court if it is found that the Commission has erred in those respects, that destroys the efficiency of the order that the Commission has made, of course, and there are other questions; the question, for instance, of contempt and the refusal to answer questions, and such things, that the Commission has no power to punish under the present procedure.

The question had to be referred to the court, and the court has to determine whether or not the testimony shall be given or be excluded. It determines whether the witness shall be compelled to answer.

The CHAIRMAN. Would you change that?

Mr. KERNAN. No, sir; I do not think so. I do not think it is necessary to change the rule. I think the punishment—

The CHAIRMAN. Is it possible now for any tribunal to secure that full amount of testimony that enables them to act in important matters without they have the power to compel the attendance of witnesses and to punish them?

Mr. KERNAN. They have the power now to compel the attendance of witnesses under the amendment to the act of 1893. The Commission has the power to compel the attendance of witnesses and compel the answering of questions. That is in the way I suggest. In case of refusal, appealing to the court and getting the process of the court to compel it. It would not do to invest the Commission with powers

of the court to punish for contempt or to exercise those powers of compelling the attendance of witnesses, punishing them for not coming or refusing to answer questions; but whenever a situation of that kind arises under the interstate-commerce act, that question is properly referred to the court, and the court determines it; so it does not leave the Commission to act in those respects as a court. I do not think that would do.

The CHAIRMAN. In the procurement of that testimony what power would you give to the Commission? What power would you give as to the payment of costs of witness fees?

Mr. KERNAN. That is provided for under the present act. The Commission has the power to have subpoenas issued and witnesses subpoenaed, I presume, out of its appropriations. I know, as a rule, that in the summoning of witnesses—I know it has been so in the cases I have had before the Commission—no process is required; it is simply on request of the Commission that the witnesses have attended. And counsel for railroads secure an attendance of such witnesses as they desire. So in that respect I do not think there is any difficulty.

Now, with reference to the next section. There is one thing there, the filing of a petition for review.

The CHAIRMAN. Where do you read from?

Mr. KERNAN. On page 6. This filing of a petition to review an order shall of itself suspend the effect of such order for thirty days. I would suggest that you strike out the rest of the language there, which might interfere with the ordinary jurisdiction of the court. I should be inclined to put that sixty days instead of thirty days. I think in those respects the act should be liberal; that if the Commission has the power to make this order, the mere filing of the petition should suspend it at least sixty days, to give the railroad an opportunity to determine whether to conform or apply to the court for a stay or whatever else it might think proper to do. I think the proceedings then of ordinary jurisdiction courts of the United States and their right to grant a stay pending appeal where there is a question of any importance involved in the matter presented before them is all the ample and full protection against any order of this Commission that ever could be made, and might be perhaps unjust to the railroads.

I do not know that I want to go further than that. Going through the details of this act it does not seem to me to need any amendment or changes except those I have suggested. There is one thing that might be thought about; that is on page 8, line 10:

If a carrier refuse to obey an order which is obligatory upon it as above.

The query in my mind as to that is this: At the time that an order is made, that in the end it turns out to be an unlawful order, does that language impose upon the carrier obedience to the order between the time it is made and the time it is declared to be illegal, or does that imply that it is the duty of the carrier to obey that order in case it is a lawful order? I assume that it means a lawful order; but if not, I suggest to the committee whether that ought to be made clear by putting that word in there, so it will read "a lawful order."

Now, for instance, take in our ordinary court practice. A man procures an injunction. It is well settled, I think, that it is the duty of the party against whom it is issued to obey it, even though in the end it may turn out to be unlawful and reversed upon appeal. Under our

court practice in New York an injunction has to be obeyed while it stands, until it is reversed. And I suggest in reference to this matter whether that language should read in that way. I do not think myself there is any particular occasion for changing the language of the act, because it seems to me all the time as though if there be in an order made by a commission any element of reasonable doubt, even as to its validity, that if you leave the protection of the United States court unimpaired, and they are right to suspend a stay pending appeal, first limiting the time to sixty days before it takes effect, that then you put the carriers in a position where they will be abundantly protected against the error of any order that may be made by the Commission.

Mr. MANN. I do not quite understand the distinction you make between a lawful order and an illegal order in reference to this.

Mr. KERNAN. The distinction? It is this: The Commission makes an order. Suppose the carrier believes, and ultimately establishes in the courts, that that order is an unlawful order made without jurisdiction; if you please, without sufficient facts to sustain it. Under the language here, would the carrier be obliged to obey it between the time it is made by the Commission and the time it is declared to be illegal by the court?

Mr. MANN. But it says an order which is obligatory upon it as above.

Mr. KERNAN. Does that imply all through a lawful order?

Mr. MANN. It implies an order which is not stayed by the court.

Mr. KERNAN. Exactly. Then it would be true that even although the order turned out in the end to be unlawful that between the time it is made and the time the court declares it to be illegal, unless stated by the court, the carrier would have to obey it.

Mr. MANN. You mean if the order is made and the railroads do not appeal to the court for review——

Mr. KERNAN. That they must obey it, even although it turned out in the end to be unlawful.

Mr. MANN. Under your idea they would have the right not to file a bill to review but simply take the position that it is unlawful and refuse to obey it?

Mr. KERNAN. Until proceedings were taken to punish them, and then go into court and make their defense.

Mr. MANN. How would those proceedings be taken?

Mr. KERNAN. The Commission would apply to the court for a mandamus to compel the railroad to obey the order. The railroad would come and say, "We concede the order was made, but we claim it was unlawful."

Mr. MANN. That would be the case under this section. If it is an unlawful order it is not obligatory——

Mr. KERNAN. If that implies a lawful order, as I think it does, then that is true.

Mr. MANN. Undoubtedly if the court did not have jurisdiction and has not made a lawful order it has not made an order that is obligatory.

Mr. KERNAN. That is generally true, you know. I think it is generally true that a man can refuse to obey an order of the court and defend himself in the end when he is brought up on it upon the ground that it is not lawful.

The CHAIRMAN. That would change the entire prescribed procedure

of this act. The act provides that it shall go into force at once or within thirty days. Then if there is no appeal it is enforced for two years. The railroad company has the power to have that reviewed, however, the law provides for that; it makes provision as to the testimony and all of that. Now, if this procedure is admissible that you are now speaking of it gives them a second remedy. They will just stand pat, refuse obedience; then when the Commission takes the initiative and goes to the court asking to have this order enforced, they come up and raise the whole question by asserting that the order is illegal.

Mr. KERNAN. Yes. Well, I only make this suggestion because it was suggested to me by a railroad gentleman, and I said "I am perfectly willing to suggest anything that occurs on this question." I do not think myself the language of the act needs to be changed. I think that even although the order be unlawful the remedy provided is sufficient. The permitting of the filing of a bill in equity and permitting the court to protect the railroad by granting a stay in case there be a doubt about the question. That is all the remedy the railroad needs to protect it against the defect of any error in these orders.

Mr. MANN. Can you imagine a case where under the powers granted to this Commission under this bill an order issued by them would be unlawful, in the sense they did not have the jurisdiction.

Mr. KERNAN. I can imagine that a commission might give an order without giving a hearing. Some commission might do that. This bill says they can not give an order until after a full hearing. Suppose they should make an order without a full hearing; I do not think that would be lawful under this act.

Mr. MANN. But the railroad comes, after an order is issued, and raises the question as to whether the court had had a full hearing when it decided in its order that they had had a full hearing.

Mr. KERNAN. That is, whether the recital in the order is conclusive proof of the fact of the hearing. I think they could raise that question of fact, sir. I do not think recitals in an order are conclusive. Recitals in a judgment of jurisdiction are not conclusive. That comes up in all these questions as to the validity of divorces. The recitals in them are usually sufficient, and that is presumptive of the fact; but I do not understand in attacking the validity of a judgment of that kind that you can not always raise the question of whether, while the facts recited are presumably true, they are true in fact.

I want to say, Mr. Mann, that I have already referred to that question that you suggested yesterday about a mistake of law, and you are right about it. I want to excuse myself, however, by saying that I have had nothing to do with criminal law and I do not know anything about it.

I would also say that I suggested, in connection with the subject of the mistake of law, that it might be well to amend that first section, because of the fact that you suggested, so as to provide, in line 2, page 2, that any person who "willfully and knowingly" procures, etc., and also to provide that that minimum penalty of \$5,000 should only be imposable upon the corporation, and as to the agent or as to the person—the shipper—the penalty should be entirely within the discretion of the court, not to exceed a certain amount.

That you see would permit the court to take into consideration the circumstances in mitigation of the offense, such as the fact that the party was innocent and did not know and did not intend to offend, in



such case to impose nothing over a nominal fine, from \$1 up to the maximum amount.

Mr. ADAMSON. I want to ask you one question before you retire.

Mr. KERNAN. All right, sir.

Mr. ADAMSON. It is no theory or hobby of mine that I advance; but as a lawyer I ask you this question. Most of the gentlemen appearing before us have been laymen, and they say that the great trouble is not that they are dissatisfied with the fairness and judgment of the Commission; but the law's delays are such that they can not get the benefit of an adjudication for years and years after the findings have been had. I want to ask you if you had thought any on the feasibility of this suggestion, and what you think of it: That when the Commission has investigated and made a finding, that that finding be certified to the convenient Federal court, and such proceedings as the party wants to have go right on without any further trouble or delay. If there is to be any resistance on the part of the road, that it be made the judgment of the court, and enforced, and executed; if the roads want to carry it further, let them proceed. What do you think of that suggestion?

Mr. KERNAN. I am not prepared at the moment to say that might not be a vast improvement over the present situation and condition.

Mr. ADAMSON. Are there any constitutional difficulties in the way of that idea, first?

Mr. KERNAN. I do not at the moment think of any. I do not see that there would be any constitutional or other objection to permitting the certification to the court of the proceedings before the Commission—the testimony and order of the Commission—and then permitting the court to render a judgment upon it, either adopting the conclusions of the Commission and entering an absolute order of judgment, or else of not doing so in case it found error. The only thing I can say about that is that the vast amount of business that would be thrown upon the court in that way would—

Mr. ADAMSON. My question is when a report is certified from the Commission it is a preferred case and it has to be put at the head of the calendar of the court.

Mr. TOMPKINS. It would still do what he said—increase the volume of business in the court very materially.

Mr. KERNAN. Of course I think, as a practical question, the circuit courts of the United States would not do any other business except to spend their time on these cases.

Mr. ADAMSON. Other gentlemen who have been here have prophesied that if the remedy could be made easier the business would decrease instead of increase; that if you found you had power to bring cases to trial it would lessen the number of cases.

Mr. KERNAN. Your courts, of course, might be open all the time for the hearing of that kind of questions, the matter would be presented immediately to the circuit court for hearing; but everybody who knows anything about United States courts knows how behind they are and how long it takes to get anything through.

Mr. ADAMSON. There is an easy remedy for congestion in the courts. It is the duty of every civilized country to establish courts enough to do the business.

Mr. KERNAN. In New York City this winter the Bar Association and the judiciary committee of the legislature have been working on the

question of how to clear the calendars of the court; what devices to adopt; whether to create more judges or let the governor send country judges to the city, or let our county judges be sent to the city to discharge the duties of circuit court judges, or what to do. So far no available method has been found either by the courts, by the lawyers, or by the legislature. It seems to me what you suggest may be to some extent practicable and would be an improvement over present conditions. Yet when you come to consider that in the vast majority of decisions made by the Commission the order is promulgated and accepted and put into effect, and that must require that before that is done it must go to the court, and then, of course, jurisdiction must be acquired by the court by the issuance of process or notice of some kind—

Mr. ADAMSON. Oh, no; my suggestion is that you might carry it there and make it the judgment of the court; that the court might accept the procedure of the Commission.

Mr. KERNAN. Of course you could not do that without giving everybody concerned a hearing in the court. You would have to take time enough to get everybody in.

The CHAIRMAN. Suppose that there has been a full hearing before the Commission and parties have been there; why could you not by law authorize the court to file that within so many days, and that within so many days after that filing—that is on a day, the tenth day after that filing, the court shall proceed; let that serve as notice and if anybody wants to appear let them appear.

Mr. ADAMSON. There is an analogy of that, Mr. Chairman, in almost every case in the State court where a commission is appointed for any purpose. Such commissions go out and investigate and report, and if the court pleases it makes the judgment of the commission the judgment of the court. That is so in cases of alimony and dower and land lines and all that, and many other cases.

Mr. KERNAN. You would make this Commission, then, something like a master in chancery, who takes the testimony, and reports the testimony to the court, and sometimes his conclusions.

The CHAIRMAN. The hearing before the Commission in such a case implies the idea of notice to everybody, and a fair chance to everybody to be heard.

Mr. MANN. The kind of a commission that has been referred to, appointed by a State court, such as a master in chancery, or anything of that sort, is appointed by the court, and such a commissioner is an officer of the court who proceeds by direction of the court. It is an elementary proposition that every court must have jurisdiction of the parties first, and to confer upon this interstate commerce nisi prius the power of a court is beyond the power of Congress.

Mr. KERNAN. Yes; the suggestion is to treat it somewhat in the nature of the report of a master in chancery.

Mr. ADAMSON. You think Congress can not provide to give jurisdiction to a Federal court?

Mr. KERNAN. That is a question I want to look at. I know so little about questions involving as much change as that that I would not want to say whether it would be constitutional to permit a court of the United States to render a judgment of that character upon the findings of a body—the taking of testimony and reporting conclusions—that

was not part of the court itself or not appointed under the order of the court itself. I should doubt whether you could do that.

Mr. SHACKLEFORD. Unless it was made an annex of the court by enactment here?

Mr. KERNAN. That ought not to be done. I do not think we ought to contemplate anything that involves changing the jurisdiction, the procedure, the methods of the United States courts. It seems to me you might find considerable difficulty in enacting the provisions such as you suggest, although it might be an improvement over the present situation in effect.

Mr. ADAMSON. May I ask you a question concerning the language on page 5? It provides there twenty days. Is not that a very short time?

Mr. MANN. He suggested sixty days.

Mr. ADAMSON. No; it was in another place he suggested sixty days.

Mr. KERNAN. I think that should be in accordance with that other section. I have suggested that that section, page 6, should be changed so that it would read sixty days instead of thirty days. I think the filing of a decision ought to have the effect of a stay for sixty days.

Now, in reference to this other, all through the bill the provision as to the number of days in which they may file a petition for review and other things should be made liberal in the matter of time.

Mr. MANN. That is, twenty days; and then the requirements that the Commission shall file a certified copy of the record within fifteen days—

Mr. KERNAN. Pretty short—

Mr. MANN. Which, if the record was long, if it was like one of these cases like the Social Circle case, it would be impossible.

Mr. KERNAN. Yes, sir. I think all through the bill in those matters of the time in which things are to be done that the bill should be scrutinized, and such experience as you have about that would tell you that twenty days is too short.

Mr. RICHARDSON. Would that operate as superseding the judgment of that Commission when that is filed within the fifteen days, or the thirty days, or whatever it is?

Mr. KERNAN. Does it?

Mr. RICHARDSON. Yes.

Mr. KERNAN. I do not understand it does.

Mr. RICHARDSON. And you do not think it ought to operate?

Mr. KERNAN. I do not think so. The railroad, upon having filed in the court the record of the testimony taken below by the Commission upon which an order has been made against the railroad, can always say to the court there is a question of law here, it is doubtful whether this order is fair and just, and the jurisdiction of the court is ample then to say. Now, for instance, a court might do this—

Mr. RICHARDSON. Now, that is going upon the presumption that the decree of the Commission is absolutely correct. Now, is not that, from the standpoint of a lawyer, a very dangerous power to put in the hands of three men?

Mr. KERNAN. You see, you favor a practical remedy. We are after a practical remedy because we have found under the act now that there is such delay that it does not accomplish anything. We have to get a line somewhere which is fair between the delay that now exists and an arbitrary exercise of power by the Commission against railroads.

It seems to me we reached that mean line of safety by providing that the United States courts shall have the absolute power to suspend the operation of that order upon the application of the railroad. I think all the experience of those who have had practice in the United States court is that the court is most liberal in the matter of staying proceedings where a question of doubt exists as to the validity of the order that is to be questioned before it.

Mr. RICHARDSON. Yet, if the Federal and circuit court refuse to do that and the railroad would still carry on their case to the last court, the Supreme Court of the United States, and that court would hold that the original order was absolutely wrong, then what remedy has the railroad company?

Mr. KERNAN. That is one of the incidents of the administration of justice.

Mr. RICHARDSON. What instance can you give in life that is equally as bad as that?

Mr. KERNAN. I do not know—

Mr. RICHARDSON. Equally as dangerous and obstructive?

Mr. KERNAN. I had an order made the other day in a divorce case to pay \$500 counsel fee, \$50 a week alimony. I am entirely satisfied that we will reverse that on appeal, but I have to pay that \$500 in five days and that \$50 a week right straight along, and I can never get that back when I reverse that. But that is one of the instances of the administration of justice.

Mr. MANN. That is one of the instances that comes from getting married.

Mr. KERNAN. Too much; yes.

Mr. SHACKLEFORD. Would not this be a fair illustration of the difficulty Mr. Richardson suggests? Suppose a lot of shippers in this country were oppressed by unfair rates, and that went on for two years without their waiting for the action of the court, and they had to pay unjust and illegal rates to get their commerce to market; would not that be equally as bad?

Mr. KERNAN. Of course; everybody recognizes that, of course.

Mr. MANN. I would like to direct your attention to an idea there—

Mr. KERNAN. I think very likely that the result of this would be that the court would secure justice in this way; here comes, for instance, the decision of the Commission which requires the railroad to do something or other. For instance, it refuses, if you please, to sustain a decision of the Commission lowering a rate. Why can not the court, upon appeal in a question of the amount involved, order a railroad company to keep an account of transactions and of the amounts received, so that in the end reparation may be done? It has occurred to me that probably something of that kind would be worked out in the practical results when the act was applied to any cases of this kind.

The CHAIRMAN. Let me suggest a point I would like to have you elucidate. Suppose a railroad company strikes an adverse circuit judge somewhere—and there have been such in the United States.

Mr. KERNAN. Rare instances; yes, sir.

The CHAIRMAN. And the judge refuses to stay the order of the Commission, which has fixed, for instances, a rate of \$1 where the rate properly should be \$2. That order of \$1 goes into effect. They appeal to the circuit court, which refuses to stay the order. They appeal to the Supreme Court of the United States, which finally passes upon the

question and decides that order is illegal. It goes back through the circuit court. In the meanwhile the \$1 rate is being collected. It goes back to the Commission, which thereupon fixes the rate of \$1 and 1 cent, and that goes into effect, and the court refuses to stay the order and they go to the Supreme Court again. They do not have to have a hearing the second time to fix the second order. Why could not the Commission maintain a low rate, an absurdly low rate, if you choose, for all time in that way? How under this bill is there any power to correct an evil of this sort, if one should arise?

Mr. KERNAN. I do not know that there is any. That assumes, of course, that a commission really acts in violation of all principles of justice and right about it.

The CHAIRMAN. It assumes that there is a difference of opinion between the Commissioner and the railroad, as there invariably will be, and as there is between the shippers and the railroads, as to what is a reasonable rate.

Mr. KERNAN. I think it is impossible to frame a bill so that it may not be assumed that there may be difficulties arising under it on both sides.

The CHAIRMAN. This is not a difficulty. The question is whether there is any way of correcting a possible injustice, and you must presume that such a case may arise, because that is exactly the case you claim as arising on the other side.

When the court of last resort has settled it, whatever may be its decision, it is settled for all time. That is the only basis upon which we proceed. But here you can assume a case where the court of last resort decides in favor of the railroad company and still is without power to enforce its decision.

Mr. KERNAN. In view of the injustice that may be done on the other side to shippers it has got to be a question of where one side or the other is going to suffer, and should we not adopt the best method we can of simply having it determined what the right rate is, and then in case it is reversed, so that the rate is found to be unjust to the railroad, then that is one of the dangers and one of the incidental things that a railroad has got to expect to suffer from the administration of the law, because I think on the other hand in most cases it is true that the maintenance of the rate in the end is found to be an injustice to the shipper.

Mr. MANN. The objection made to the present interstate-commerce law, as I understand it, is that while the Commission has the authority to decide that a rate is unreasonable, and that can be carried into effect, it has not the authority at the same time to decide what is a reasonable rate.

Mr. KERNAN. For the future?

Mr. MANN. For the future. Now, in this bill, as far as I gather, it gives the courts power to say whether the rate fixed by the Commission is reasonable or not.

Mr. KERNAN. Yes, sir; that must be open to reform.

Mr. MANN. But it has not given the courts authority to decide what is a reasonable rate, and under this bill as I understand it—that is the reason I am asking you, I may be mistaken—if the courts decide that the rate fixed by the Commission is not reasonable the courts can not decide what is a reasonable rate. They refer it back to the Commission, which may incidentally say, without a hearing, that a rate of a quarter of a

cent or any fraction of the above rate that they previously decided upon shall be a reasonable rate.

Mr. KERNAN. Are you sure about that?

Mr. MANN. I am not sure about anything.

Mr. KERNAN. Are you sure that the court has not jurisdiction in all cases of review to reverse, or to affirm, or modify?

Mr. MANN. I don't know.

Mr. KERNAN. I think that jurisdiction exists. I know in all of our State courts where a judgment comes up that is wrong it can reduce it.

Mr. MANN. The courts hold now that they do not have the power to decide what is a reasonable rate under the interstate-commerce law. All they have the power to do is to decide whether it is unreasonable.

Mr. KERNAN. The courts hold that the power of the Commission is to say. That question has not been raised. I understand that the courts have power in every case of appeal on a question of rates to say what a reasonable rate is.

Mr. COOMBS. Not to fix it, though.

Mr. KERNAN. Not to fix it except in a way that it would be substantially binding on the Commission thereafter. It can say, for instance, this rate fixed by the Commission was unreasonable, being fixed at a dollar, upon the evidence that it ought not to fix it for more than 50 cents.

Mr. MANN. That is the very complaint by the shippers, that that is not binding on the railroad company, and the complaint is that if a reasonable rate is 50 cents and the railroad has fixed it at \$1 and the Commission finds it unreasonable and the courts say 50 cents is a reasonable rate the railroad comes again the next day and makes a rate of 99 cents or 99.9 cents.

Mr. KERNAN. Now, this is designed to enable the Commission to fix the reasonable rate for the future. I think in reviewing that the court has a right to affirm it or reverse it in whole, or to say that the Commission instead of fixing that at 50 cents ought to fix it at 25 cents.

Mr. SHACKLEFORD. Would there be any objection to putting that in the law?

Mr. KERNAN. I think that would be binding thereafter upon the Commission under the same set of circumstances.

Mr. MANN. Let me read you what the bill says:

If upon hearing, the court shall be of the opinion that the order of the Commission is not a lawful, just, and reasonable one, it shall vacate the order.

Mr. KERNAN. What page is that?

Mr. MANN. Page 5 [reading]:

Otherwise it shall dismiss the proceedings in review.

Mr. ADAMSON. You do not think the lawyers and litigants in the country would consent, do you, Mr. Kernan, to have the entire time of Federal courts devoted to fixing rates.

Mr. KERNAN. That is one of the difficulties we were trying to get away from.

Mr. ADAMSON. Under the idea you enunciate it looks to me like—

Mr. KERNAN. I said it was only a question of power. I have not said whether I thought it was practicable to do it.

I think courts have power to modify it or affirm it or reverse it; but

I have not said I thought it was good policy to put them in the position of doing it.

Mr. ADAMSON. And just make the order final in the other case; say what it ought to be——

Mr. MANN. But it seems to me that the evil which the shippers now complain of would then fall upon the railroad companies absolutely.

Mr. KERNAN. It might be true in some cases.

Mr. MANN. Because this bill does not purport to give the courts power certainly to say what a reasonable rate is, but only to pass upon the question as to whether the rate fixed is reasonable, and that power they now have.

Mr. KERNAN. It might be true that in some cases that would result; but it is impossible to frame a law, I think, where there is no possibility that there may not be injustice done for a time. There is no method of procedure where something of that kind may not happen.

Mr. SHACKLEFORD. Why might not that power conferred by that section be conferred upon the court upon review of any court, if the rate is found unreasonably high or unreasonably low it shall be within the power of the court to establish such a rate as will be reasonable?

Mr. KERNAN. Why not adopt the methods of our appellate courts in New York? The appellate courts there are authorized to affirm or reverse or modify. The difficulty here seems to be that there is no authority in the United States court under this section to modify.

Mr. SHACKLEFORD. Why not confer it by this section?

Mr. KERNAN. I see no objection to it. I think it would be a good thing to do.

Mr. COOMBS. Would not that interfere with the legislative function?

Mr. KERNAN. This whole business——

Mr. COOMBS. You have the power to establish a rate——

Mr. KERNAN. This whole thing is an interference with the legislative function. In passing the interstate-commerce law whatever power you conferred upon the Commission the Supreme Court has said was legislative; and this is simply conferring more legislative power.

Mr. MANN. As I understand it, the court always has provided, as a matter of judicial determination, what is an unreasonable railroad rate. The only question is in determining it in such a way that it can be enforced through the Commission.

Mr. KERNAN. I think this would be very well amended as suggested, so that the court would have a right to modify; so instead of compelling the railroad to reduce their rate 10 or 50 cents a hundred that the law should provide that it might be only one-half of that reduction, and as so modified the order of the Commission is affirmed.

Mr. COOMBS. Do you think that would be constitutional?

Mr. KERNAN. Now, when you ask a question like that I do not answer it without looking at it. I do not see now any constitutional difficulty in permitting courts of the United States to affirm or reverse or modify, and I think they do exercise that power. I know all appellate courts in our State exercise the power of modifying. They say this judgment for \$10,000 is reversed unless the respondent consents to reduce it to \$5,000.

Mr. COOMBS. But that is a body to which has been delegated legislative authority.

Mr. KERNAN. If the court has the power of modifying as I suggest,

then when an appeal is made on review for the stay and they having that power of modifying, the railroad says the order is that we shall make a reduction of 10 cents, whereas they ought not to have ordered us to reduce more than 5 cents, and because of that apparent order, or because we can satisfy your honor upon the papers here presented which come from the Commission that the Commission probably, or perhaps reasonably, made a mistake; we therefore stay the proceedings.

That covers the ground. You extend the jurisdiction of the court, then, to grant a stay where it seems that there is probable reason that, in the final judgment of the court, they may to some extent modify the decision of the Commission. I think it could be modified in that way.

Mr. MANN. Now, one other question in reference to sending back to the Commission to take testimony.

Mr. KERNAN. I have said something about that, and I would repeat that that is a very material feature, as any lawyer appreciates. For instance, I have gone before that Commission with a window-shade case. We took an immense amount of testimony. The Commission rendered a decision in my favor as to the classification. Then I went before Judge Wallace to compel them to obey that order.

Before I come to that—this is a curious instance to show you how these things operate. After I got that decision against the New York Central, and the Delaware, Lackawanna and Western, to place window shades in a new classification, a week or two after the decision I wrote the New York Central and asked them what they were going to do about complying with that decision. The traffic manager wrote back to me that they had concluded that the decision was just, and that they would accept it and put that classification in force. I have that letter. Mr. Haggeman of the Delaware, Lackawanna and Western did the same thing. They said they agreed to accept the decision of that Commission, and the classification went into effect, and we shipped under it for four or five weeks. The first thing we knew it was changed back to the old classification. I wrote again to the traffic managers and asked them what they meant. They said that while they themselves were quite willing to conform to the decision, that their associates in the traffic association objected, and therefore they would be obliged not to comply.

You see the position we are in. When great systems like the Vanderbilt system do not dare to stand up and accept an order which they themselves concede to be just, because of the pressure brought to bear upon them by their associates in an association of that kind, you see what a question this is. It is not a question of whether half a dozen—or 50 roads sometimes—want to do a thing. The weakest line in the combination can force the strongest line to rebel even against a decision which the strongest lines admit to be just. That is one of the difficulties of the situation.

In the case I have referred to, I went before Judge Wallace when they refused to obey the order and asked that they be compelled to obey that order. They treated that whole proceeding before the Commission as though there had not been any testimony for findings at all.

They came in with stacks of affidavits, all complicated and twisted up, and I had to reply by affidavit, and the result was that we had before the court the testimony taken before the Commission and the testimony taken before the court and stacks of affidavits. Every law-



yer knows what it is to try a case of that kind on affidavits. There is no opportunity of cross-examination, no opportunity for either side to cross-examine the affiants. And so, no matter about the history of that case further, but that is the way we had to try that case finally. Although we had the findings and the decision of the Commission, they were treated by the railroads as absolutely useless. That has been the practice of the railroads. They do not present their case before the Commission, because they hope by not presenting it the Commission will make some mistake, will leave some loophole for them, and that they, if they try the case at all, can try it de novo.

The Supreme Court of the United States has commented on that and said that is a practice of the railroads which is a very wrong one and which ought to be corrected. It has said that they ought not to be allowed to present their cases piecemeal before a commission and then come into court and treat the case de novo.

Mr. MANN. Who takes the evidence before the Commission?

Mr. KERNAN. The Commissioners.

Mr. MANN. They sit as a commission?

Mr. KERNAN. They have in every case I have known of. A majority of the Commission sit.

Mr. MANN. Do you think they could take evidence enough to expedite the trial of all these cases, if this act goes into effect?

Mr. KERNAN. Within the limits of human endurance. If you take a body of five men who are trained on this question and have nothing else to do they can accomplish a great deal. They do not have to try trespass cases and negligence cases and damage cases; but simply devote themselves to one thing.

Mr. MANN. They have to decide cases. That is a good deal besides trying cases. There are only three hundred and sixty-five days in the year and practically only one court sitting taking testimony.

Mr. KERNAN. There are limitations on it, of course.

Mr. MANN. How will it be possible for one commission to take all of the testimony in all of the cases which would be brought under this act, involving railroad rates all over the country, in addition to trying cases?

Mr. KERNAN. You must remember one thing, and it has been true in the cases we have tried there. The Commission keeps accumulating facts, testimony, and so when you come to a hearing upon almost any question you find a vast number of your facts already covered, covered by previous decisions, covered by the filed tariffs, covered by previous findings, and that the additional testimony is not as extensive as it is where you have to go before a court in each case, or a different court in each case, and go over the whole thing. The Commission accepts accumulated facts.

Mr. MANN. Would they not have to go over the whole thing in each case?

Mr. KERNAN. They might, but practically it results in this: You are one side for a railroad, and I am on the other side, and we go before the Commission, and as to the tariffs and the vast number of facts, the Commission having already possession of them, we consent that that become part of the record in our case. That is always done.

Mr. MANN. That is done to a certain extent in courts just the same; but here is a railroad case that will arise in New England, and another one in California, and another one in New Orleans, and forty in Chi-

cago, not to mention those in other parts of the country. Now, how is the Commission going to be able after hearing the case, the court requires new evidence, to trot around and take that new evidence and ever get the matter disposed of?

Mr. KERNAN. I think as the Commission proceeds it keeps, as I say, eliminating the necessity of doing that work all over again in each case, and it keeps accumulating tariffs, and regulations, and facts, and agreements between railroads, so that it has almost always in every case presented all the fundamental foundation facts or many of them. It has the experience acquired in other investigations, which perhaps require in the present investigation only that it be supplemented by some new facts covering the situation. Take, for instance, a hearing on the question of an Atlanta rate.

Very likely the Commission has been through the question of the competition that applies to rates generally, from Atlanta to New York City, and therefore it does not have to spend time in going through again and acquiring information as to the situation that Atlanta occupies as to similar competition points.

Mr. MANN. It would serve that evidence up to the court?

Mr. KERNAN. Yes.

Mr. MANN. It would have to take this evidence over again, would it not, if it was going to certify to a circuit court?

Mr. KERNAN. It would if a railroad insisted—

Mr. MANN. If the railroad's policy was to delay it would insist, would it not?

Mr. KERNAN. Oh, no; I have never had any practical difficulty with the railroads in that regard.

Mr. MANN. But you have never had this act in effect.

Mr. KERNAN. Under the old act the parties always agreed upon such fact without difficulty; they agreed as to a vast number of things.

Mr. MANN. But the difficulty is under the present law—

Mr. KERNAN. Now, I will admit, Mr. Mann, if every railroad every time a complaint is made wants to come before the Commission and put it through the proof from A to Z, and delay it and bother it, it can do it; but that is not the practical way that they treat the question or that anybody does.

Mr. MANN. It has never been treated that way before because the Commission has never had the power to settle the rates.

Mr. KERNAN. For ten years the railroads thought the Commission had all the power.

Mr. MANN. That is your claim, but the railroads do not say so.

Mr. KERNAN. There are no decisions to show to the contrary that I know of. Perhaps I make a somewhat extravagant statement; perhaps there were some, but, as I say, the vast majority of them—take my export and import rate case. I will tell you that eighteen out of twenty-eight accepted the decision, and sent word to the Commission that they would obey it and change their rates accordingly. The question of power in the Commission has been one that is a difficult question, and it is a question whether they have not that power already.

Mr. MANN. Has not the Commission the power to delegate anybody else to take testimony?

Mr. KERNAN. I have never known them to do anything like that; I have never known testimony to be taken except by the Commission.

Mr. MANN. There are five members of the Commission. Can each one of them hold court and take testimony at the same time?

Mr. KERNAN. In all of the cases I have been in there have always been a majority, at least three members, when testimony is taken.

Mr. MANN. The bill says, "The Commission."

Mr. KERNAN. I have taken testimony before three of them, but I have never known the taking of testimony except before a majority of the board.

Now, I want to say another word about this pooling question in the other bill, and about something we have to suggest in reference to that which we think goes as far as the legislature should go, as far as Congress ought to go.

I always thought it was a mistake to prohibit pooling in the interstate-commerce bill originally. I think they ought to leave it under the common law of limitations, which prevented the parties to pool from recovering against each other any agreed penalties or any damages. They go into court and the court says, Your pool is a violation of the common law, and we will not help either party, and we will not render any judgment in favor of either party. I thought it was very desirable that through something like pooling destructive disastrous competition should be regulated and restrained.

The difficulty about authorizing pooling is this: Pooling practically involves a destruction of the right of the shipper to route his traffic, and that is the fundamental difficulty that they have never been able to get over. I examined Mr. Albert Fink on the pooling question, and his examination lasted a number of days. Mr. Albert Fink is the ablest railroad man on the subject of transportation questions that I have ever met.

He was brought up as the traffic agent and manager of great systems like the Louisville and Nashville and others, and finally, because of the fact that he knew the business from A to Z, and because he was one of those great, big, broad-minded Germans that could take in all sides of all questions, he was chosen by the railroad as the joint traffic manager of the Trunk Line Association, and held that position until he resigned it and would not work any longer; because he was a man who could take all the claims of conflicting railroads in that association and pass upon them with a just conception of what was due to each, and how to get at what was right about it. I never knew a man who could get up a statement on the popular side of the transportation question as well as he could. He covered the whole ground. He saw it all. He was in favor of the interstate-commerce law; he always favored regulations of railroads by law. He stated that it must come—that the only way to ultimately reach the control of rate-cutting lines that were cutting into and destroying the revenues of the strong lines—that the only way was ultimately through regulation by law, which they would have to comply with.

Now, upon pooling; I asked him about pooling. He said pooling was of two kinds; either a money pool or a traffic pool. He said the Trunk Line Association had practiced to a more or less extent the money pool, but said it was utterly impracticable. Here are two lines running from Chicago to New York that are competitive. Now, then, one of them, the Canadian Pacific, is a weak line. It is a line 1,200 miles long. The Pennsylvania Railroad is a strong line. It does business, and has a vast volume of business, at a low rate per

ton mile, and can afford to do business at that rate and give first-class service. That road is 822 miles, against 1,200 miles for the Canadian Pacific. You get those two railroads into a pool, and what is the result? To preserve business, and carry out the object of the pool, you have to give to the Canadian Pacific 25 per cent. We propose to give it to it in a money pool, and that means that at the end of the year we will see it has carried only 10 per cent of the traffic. Everybody wanting to send traffic wants to send it by the best line, not by the long-around line.

Mr. Fink said there was not a strong line in the combination that would not be willing to pay three times every year in money the entire amount of the value of the percentage of traffic to the weak line to it, because at the end of two, or three, or four, or five years the weak line would have to go out of business entirely because it would not have any traffic. A railroad can not live on a money pool. The weak line can not stand it. Its rails rust, its force is not occupied, and it has nothing to do, and it can not stay still and let its road lie idle. So a money pool, he said, was not practicable. That brings us to the necessity of having a traffic pool. It must have its 25 per cent of the traffic. How is it going to get it? It can only get it by taking it from you and me against our protest. You are in Chicago; I am in Chicago. You are in grain. Modern conditions require that transportation shall allow us to reach our markets quickly.

If you can get your grain to New York in five or six days that becomes an essential element, a part of your business, and you want the Pennsylvania or the New York Central to take your grain because the conditions of business require that you get it there as quickly as possible, and you do not send your grain around 1,200 miles by the Canadian Pacific, delaying it from two to four days. But to maintain the pool some of your grain, 25 per cent of your grain, has to go by the Canadian Pacific. Therefore you have to invest in a pool and try to route traffic, so as to destroy the right of the shipper to route his own traffic, and you can not maintain it in any other way.

And this objection to pooling, which nobody has ever been able to suggest any remedy for—they try to remedy it in this way: They try to remedy it by giving a differential from the interior to Europe; and if they make that differential low enough to overcome the objection of the shipper shipping that way, then it is so low it does not pay and it is a losing rate; and if you make the differential high enough to permit a profit, it is so high the traffic will not go that way. That is the difficulty about pooling.

Therefore I do not think there is any serious question that nobody would for those reasons favor a pooling bill. I thought they would work it out in some way, and they are doing so. A better way—they are working out the elimination of competition by consolidation of competing lines. I think that is a safer and better way. For instance, you have a half dozen roads in a pool and you as a body are sitting here to determine the questions arising in that pool as to division of traffic, and all that kind of thing, and as to rates.

The weak line in the pool constantly forces the situation. You have to finally render a judgment which does injustice to the strong line because you give to the weak line something that is a matter of ordinary competitive condition that it can not get. That is the difficulty with dealing with the situation in a pool either by the legislature

or by any other body. If you permit the pool to regulate its rates, your rates have always got to be based upon the interests of the weak lines in the pool, which involves a concession to them of something which under the laws of supply and demand and transportation they could not get. And, secondly, you are knocking your heads against a principle which is right and which in the end has got to prevail.

Now, then, under this modern concentrated ownership of a half dozen lines you deal with them as one entity. For instance, a complaint comes before you that the rates upon a certain part of one of their lines, upon one system, are wrong. Now, if that is a weak line you have that difficulty in dealing with it by itself—don't you see?—that you can not cut its rates to what they ought to be because you bankrupt it. That is the only reason why you do not do it. But when it becomes a part of a great system then, in considering all questions of rates and their relations upon all of the parts of the system, you only take into consideration the gross earnings for the whole system, the expense of the whole system, and, treating it upon that basis, you can fix your rates—do you not see?—relatively fairly.

It does not become so important then whether you cut the rate or raise rates on a part of the system so long as you do not affect the revenues of the whole system injuriously.

I want to suggest this view; to add to this that associations can be formed among the railroads for the establishment and maintenance of just, reasonable, preferential, uniform, and stable rates, and for the promulgation and enforcement of reasonable and just rules and regulations as to the interchange of interstate traffic and conduct of interstate business among each other. That will lead to the railroads agreeing on uniform classification legally. It will lead to the maintenance of rates. They can provide their penalties among themselves for breaking their agreement. Those penalties will be just, because they will be agreed upon by the railroads themselves, not imposed by Congress. They will agree that if they break the agreement they will pay to each other such and such penalties, and this will authorize what does not exist owing to the common-law prohibition—the right among those railroads to recover those penalties from each other.

Mr. RICHARDSON. Would that suppress rebates?

Mr. KERNAN. Yes; it would tend to, because they can put penalties on each other.

Mr. RICHARDSON. A rebate is a secret matter.

Mr. KERNAN. But railroads know what they are doing; they can tell by the way traffic starts and runs in increased quantities whether it is because of some rebate given. They can readily find out each other's wrongdoings and a good deal quicker than outsiders can. If they, among themselves, agree upon rates and classifications and on penalties for violations of the agreement, and if by act of Congress that is made a legal agreement, so it can be enforced by the railroads, I think it is a great step, and a concession that railroads ought to have.

That agreement is to be filed with the Interstate Commerce Commission. If they disapprove it it does not go into effect. If they find it is against public interest they can disapprove it, stating their reasons, and then that leaves the railroad in a position to renew the agreement, eliminating from it these things which have been found by the Commission to be unjust.

I think with that addition, Mr. Chairman, this bill will go very far

toward perfecting and carrying out the system, the method that Congress had in its mind. I do not think we ought to abandon the interstate-commerce law now. Having started upon that as a direction in which we might ultimately hope, through its operation, through the ascertainment of its defects, through their corrections and amendment and changes, in time reach a satisfactory regulation of these questions between the public and the railroads.

I do not think we ought to stop now. I think the effort of every legislature and every man that talks to them ought to be to try to perfect that law, so we may at least in the end have the law as it ought to be, as perfect as it can be; and then, having given it a trial, we will know whether regulation by law and by statute of these great questions between the carriers and the people is a practical solution of the difficulty. But until we have an amendment of the law, reasonable and just to the end of correcting its defects, we never can know really whether the interstate-commerce law is or is not going to be a solution of these transportation difficulties.

(Adjourned.)

---

MONDAY, *April 21, 1902.*

The Committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Judge Knapp, will you give your views to the committee this morning? I will say that for two weeks this committee has been considering and taking statements upon the general subject of interstate transportation. We have heard from a good many gentlemen, and the committee determined finally that they would be glad to give the views of the Interstate Commerce Commissioners, commencing to-day and taking such time as you and the other gentlemen of the Commission desire, and I would say that while we have a number of bills before us we have not been especially considering any one of them, but the entire subject, although House bill 8337 has been to a considerable extent discussed by gentlemen appearing before us; and if you have a copy of it, or we will furnish you a copy if you desire to discuss that, we will be very glad if you will pursue that course, or otherwise any course that is agreeable to yourself.

#### STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN OF THE UNITED STATES INTERSTATE COMMERCE COMMISSION.

Mr. KNAPP. Mr. Chairman and gentlemen of the committee, I am very much obliged to you, as are my associates, for giving us this opportunity to express our views respecting the various legislative proposals which are before you.

So much may be said on this subject that I hardly know where to begin or what comments of my own will likely be of most service to the committee.

One thing, however, I am disposed to say at the outset. Those who do not want the Government regulation of railways to succeed, those who do not want and do not intend that railways shall be subjected to any actual and effective control, are just now very bold and eager in

declaring that this law needs no amendment, that the law is all right as it is, and all that is necessary is for the Commission to go on and enforce it just as it stands.

Now, of course talk of that sort deceives no one who is familiar with the facts or has any knowledge of the actual situation. This law is defective. In some important respects it is practically unworkable. The great principles which are embodied in it are sound. Its purposes are wholesome and beneficent, but the machinery provided for enforcing those principles and realizing these purposes was never sufficient; some of it has broken down, and it is sadly in need of renewal and repairs.

Now, to present my personal views in the briefest way I ask your attention to some observations of this sort.

I suppose that any scheme of public regulation will provide, as the present law provides, that all carriers subject to its provisions shall publish the rates which they expect to charge the public. In other words, that there shall be an announcement, through duly published tariffs, of the rates which the public will be required to pay.

Under the present law the carriers exercise without restraint the initiative in rate making. They are free to put in just such tariffs as they see fit. They are under no legal restraint whatever in that regard, and there is no proposition to change the law in that respect. I do not advocate, and so far as I am aware no member of the Commission has ever advocated, that the initiative in rate making should be taken away from the carriers and given to the Commission or any other tribunal. So we assume that whatever is done in the way of amending the present law will not in any respect change this provision in that regard, and that carriers will continue to be free to exercise entirely the initiative in rate making. They will be free to put in just such tariffs as accord with their judgment or their interests.

That being so, two difficulties at once arise, and those difficulties I beg to submit to you are of very different character and require very different treatment. The first difficulty is, how are you going to compel the observance of these tariffs when they are once published; that is, how are you going to stop rebating and rate cutting and all those different devices by which one shipper in a given locality gets better rates than his business rivals? The way the present law undertakes to prevent that kind of evil is to say that rebates and rate cutting and all secret arrangements which are preferential in their character are misdemeanors and are to be punished as such, and I do not know any other way to treat that class of difficulties. Of course, I think there is, perhaps, something to be said in favor of supplementing that treatment with one which should subject the carriers engaging in such practices to a forfeiture to be recovered in a civil action; but aside from those two remedies I know of no other which can be applied to this class of misdemeanors or offenses.

Now, there are two respects in which the present law, in its attempt to reach and prevent and punish those who permit these practices, has proven to be entirely inadequate. The first of these is that the corporation carrier is not liable, but only the officer, the agent or representative. That is to say, the real offender, the corporation, which is the beneficiary of the illegal arrangement, is not under any liability. Now, that has two very unfortunate results. One is that you can not obtain voluntary testimony under such circumstances. Offenses of

this kind are not like those against rights of property, which are sought to be prevented by general laws, because in those cases there is always somebody who is injured, there is somebody who is in the attitude of prosecutor, there is somebody who is not only willing, but desires to bring the offending party to justice. But when a railroad officer makes a secret compact with a shipper which gives him a lower rate than the public are required to pay, both parties are presumably benefited by the transaction; neither wants to expose it and ordinarily neither of them will disclose it; certainly not by any voluntary action. Railroad officials of that grade which participates actually in transactions of this kind are a sort of fraternity; they are like lawyers and are personally intimate with each other, and over and over again they tell us that they will not under any circumstances give evidence or be in any way connected with the effort to disclose the truth of those transactions when the result of that disclosure might be to inflict punishment and suffering upon some friend or send some associate to jail.

Now, directly connected with that is the further fact that the shipper is not directly benefited by this rate at all, unless the secret rate gives him an actual discrimination against some other shipper, but that is something that very rarely happens, because these rebates and secret arrangements are not ordinarily made with the isolated individual shipper, but they are made with great combinations of shippers, they are made ordinarily under circumstances such that the transaction covers practically all the traffic that moves from a given point. Consequently there is no actual discrimination between the shippers.

Take the well-known and notorious case of the recent investigations of the Commission respecting rates on dressed beef and packing-house products. Here railroad officials for the first time admitted that for years they had constantly and habitually disregarded their published tariffs and had carried at rates below the published tariff an amount of traffic so great that the difference between the published rate and the actual rate amounts to billions of dollars a year, and yet it was the unanimous testimony that all the shippers who were interested in those rates got practically the same rate. There was no discrimination between Armour and Swift and between Hammond and Sulzburger.

They all got the same rate, and I undertake to say—and I do not think it can be successfully controverted—that upon the facts in that case, showing a most extensive and, as it seems to me, alarming disregard of legal duty, not one of the shippers is amenable under any process, either civil or criminal. No indictment will lie against those shippers, and no prosecution can be carried out and no punishment can be inflicted upon any of them, because you can not prove that there is any actual discrimination between them; they all got the same rate. And that is only typical of what will be ordinarily the case, and that is particularly true under our modern methods of competition, and due to the fact that great business enterprises are centering in a few hands. It is not any longer the case of some individual getting a preference or a discrimination through the secret practice, but it is the case of great aggregations of shippers controlling enormous amounts of traffic which succeed in getting it carried entirely at rates below those which the general public have to pay, and in such cases they can not be reached at all.

So I say there are two respects in which this law is in urgent need of amendment.



Mr. CORLISS. I would like to ask you, if I will not interrupt you, right there if in that case it was developed that there were small shippers who at the same time and over the same lines shipped beef at a higher rate than the larger shippers paid?

Mr. KNAPP. It was not developed, but that I do not think was the fact.

Mr. RICHARDSON. Where, then, was the injury which was done to the general public?

Mr. KNAPP. That I am not arguing.

Mr. RICHARDSON. Who was complaining, if there was no discrimination?

Mr. KNAPP. If no injury results from the fact that the men who produce in such enormous quantities dressed meats and packing-house products get these preferences, then there is no occasion for requiring the performance of the published tariffs, and not much to be accomplished—

Mr. COOMBS. If other shippers are supposed to rely upon the published tariffs they may be greatly injured by the secret cuts upon their product and not others.

Mr. KNAPP. That is true. There might be some small shippers in certain localities; and one reason, and I think it comes pretty near explaining the situation, why this business is all in the hands of four or five great concerns, is because their preferential rates, although uniform between themselves, have driven all the small concerns out of the field.

Mr. RICHARDSON. The actual complaint, then, is that the railroads publish one rate and take another.

Mr. KNAPP. That is it.

Mr. RICHARDSON. When there is nobody injured by it?

Mr. KNAPP. I do not say that. I say there is great injury in it. If all the packers in Kansas City get the same rates—that is, all these large packers, and there are not any small ones left in Kansas City—if all the large ones get the same rate, they are not indictable, no proceeding can be taken against them; and the smaller concerns in the other places, and nearer to markets, are put at a disadvantage which drives them out of the business.

Mr. STEWART. Would you not suggest right there that it should be made a penal offense to make any departure from the published rates, whether there be a discrimination or not?

Mr. KNAPP. That is exactly what I am here to favor, and what the pending bill favors.

I want two things; I want the corporation carrier made liable, and I want the shipper made liable when he accepts a preference or secret rate, whether there is discrimination or not.

Mr. STEWART. Would it not be a good idea, when they publish their rates, to have them make an affidavit that no discrimination is intended or will be made in variance with the published rates?

Mr. KNAPP. I do not think that is necessary.

Mr. ADAMSON. Would you not better go further and punish the shipper for attempting to secure a lower rate, whether he did or not?

Mr. KNAPP. Yes, sir; and I think one of the pending bills here does make the shipper liable who solicits a preferential rate.

Mr. MANN. You think that the shipper ought not to have an oppor-

tunity to try to get lower rates except through the Interstate Commerce Commission?

Mr. KNAPP. Or through such influence as would tend to bring about a lower rate of freight to everybody.

Mr. MANN. He can not go to the railroad company if it is a penal offense to solicit a lower rate—

Mr. KNAPP. He has no right to solicit a lower rate for himself alone. He may solicit and urge the carrier to reduce his published tariff to everybody, which will be open; but he has not any right to go to them and ask for it for himself alone.

Mr. MANN. Is it not a fact that where railroad rates have been reduced it has only been, and invariably, by the competition, and shippers in one case obtaining lower rates than the published rates, and then the company being obliged to come down to that special rate, which then becomes the published rate?

Mr. KNAPP. There are some instances of that kind.

Mr. MANN. Do you know of any other instance, where it has not been done in that way, where it has been accomplished?

Mr. KNAPP. I think there are many instances.

Mr. MANN. Where, without the competition, the rates have been reduced?

Mr. KNAPP. Put it in this way. I think you will be surprised—and I speak from my own personal point of view and not for my associates in any way—I think you will be surprised to see how slight and inconsequential have been the reductions in the published tariff rates which are due to railroad competition. That competition has brought down rates is beyond question, but it has brought them down under secret agreements by which a few have profited.

Mr. MANN. Take the case you cited a while ago.

Mr. KNAPP. A few have not profited there.

Mr. MANN. Everybody in the business has profited?

Mr. KNAPP. Everybody in the business at that place.

Mr. MANN. Yes.

Mr. KNAPP (continuing). But if dressed meats and packing-house products are carried out of Kansas City for 5 or 10 cents cheaper than from Indianapolis and other places, how is the man in Indianapolis going to stay in the business against such competition as that? He can not do it.

Mr. MANN. Probably not, but the consumer will eat dressed beef just the same—

Mr. KNAPP. But if it is for the interest of the consuming public that there shall be secret rates and bargains between the shipper and carrier, what is the use of having any public regulation?

Mr. MANN. These rates were not secret; they were known.

Mr. KNAPP. Certainly they were secret.

Mr. MANN. Were they not known?

Mr. KNAPP. It was known in a general way. It was a moral certainty that the tariff rate was not applied, but the extent of the reduction, and the way in which the reduction was effected, the amount of the reduction, was not known until we got at it in this case.

Mr. MANN. There was no discrimination at Kansas City?

Mr. TOMPKINS. He said not at that point.

Mr. MANN. Not at that point, between individuals?

Mr. KNAPP. Apparently not.

Mr. MANN. There was nothing to prevent the railroad company from making an open rate from that point as low as they made the secret rate?

Mr. KNAPP. Apparently not.

The CHAIRMAN. Except the long and short haul clause.

Mr. KNAPP. As my brother Prouty observed, we began this investigation a year ago, and we had a session in Kansas City, and we examined before the Commission every local traffic manager of the lines leading out of that city, and not one of them admitted that there was any reduction. They all testified that there was not, and that the published rates were observed.

Mr. MANN. Why were they not punished for perjury? I should think the Interstate Commerce Commission would find a useful field for its activities in that direction, if they all lied before you.

Mr. KNAPP. I do not think they did know, in many cases. The vice-president of one of the leading lines, who testified before us in Chicago and who admitted what had been done, said that none of his subordinates knew anything about it. He said that that matter was arranged solely by himself and was entirely in his own hands.

Mr. PROUTY. And that all papers were destroyed.

Mr. CORLISS. I would like to ask you, in this investigation, which I have not read, was it developed over what period of time these rebates had been permitted, had existed—how many years?

Mr. KNAPP. The order under which the investigation was made limited in terms the inquiry to the calendar year 1901, but it cropped out in the course of the examination of witnesses that what occurred in this year had occurred during previous years, and that practically for many years, one might almost say from the origin of the industry in large volume at Kansas City, it had been the practice.

Mr. CORLISS. I wanted to know whether it was prior to 1880.

Mr. KNAPP. They had had these reduced tariffs.

Mr. CORLISS. Do you not think that, as a matter of fact, that rebate, running back for twenty-five years with the beef industry, has had the effect of driving out of existence all these small competitors?

Mr. KNAPP. I firmly believe that. Not only in this case, but in many other cases.

Mr. MANN. Do you know of any competitors who have been driven out?

Mr. CORLISS. I can tell you of a lot of them.

Mr. MANN. If you have that information, Mr. Corliss, you ought to furnish it to the Commission. I should think it would be in violation of the law.

Mr. KNAPP. Of course, I have no personal knowledge except as statements have been made to me by those who were trying to do business as against this large combine.

Mr. MANN. The law absolutely forbids discriminations, as I understand it.

Mr. KNAPP. Yes, sir—

Mr. MANN. Now, if anybody has been discriminated against, and these men openly admit the discriminations in their favor, I can not understand why they are not punished and why no effort is made to punish them.

Mr. KNAPP. There are two reasons for that. This Commission has repeatedly held investigations of this kind when there was information

or circumstances which warranted the inference that the rates were cut. They have gone to the locality and summoned the railroad managers and subordinates and put them on the stand and examined them under oath, and every one of them have sworn that they knew nothing about rate cutting whatever.

Mr. MANN. But in this case they admitted it.

Mr. KNAPP. Yes. Now, another answer. Of course we can not tell what the Supreme Court will decide upon any question, but my own judgment is that the discrimination which is referred to in the sixth section, and which must be shown in order to convict the shipper, is a discrimination between individuals under the second section of this law, and not the discrimination between localities under the third section of the law.

Mr. MANN. The law has been in force for many years, and I should think it would be about time to get it decided by the Supreme Court; there have been so many discriminations.

Mr. KNAPP. Now, I want to go a step further and say that, notwithstanding the numerous persistent attempts which the Commission has made to get the testimony which shows the existence of these practices, this inquiry in January in Chicago is the first instance in which we ever got any, and we have done everything with that testimony which it is possible to do.

Mr. MANN. Do you think if it has been so hard to get evidence of discrimination when only one of the parties is to be punished that it will be easier when both of them will be punished under the law?

Mr. KNAPP. No, sir; I do not.

Mr. MANN. Then why will such a proposition as you make aid, if you punish both shipper and shippee?

Mr. KNAPP. I am free to confess that as a practical method of enforcing this law there is much to be said in favor of not making the shipper liable at all. That is the way the law was originally. Then it was changed, presumably to take in the shipper, but did not take him in unless you could show the actual discrimination.

I want to answer Mr. Mann a little further. I said what I did about the testimony for the reason that the Supreme Court, in deciding the White case, said that similar circumstances and conditions under the second section was a very different thing from similar circumstances and conditions under the third and fourth sections; and I do not believe you could show that the actual rate which the packers got from Kansas City was a discrimination under the third section as against a packer at Cincinnati, and that the Kansas City packer could be indicted.

If you could show that Armour got a lower rate than Swift, or somebody else at the same time, then you would have a discrimination under the second section and Armour could be indicted; but that is not the fact.

Mr. MANN. I quite agree with that position as far as I am personally concerned. I do not think a discrimination at Kansas City is a discrimination against Cincinnati within the meaning of the law.

Mr. RICHARDSON. Right there you said that you called in certain of these railroad officials and they all denied the fact of any discrimination.

Mr. KNAPP. That has happened more than once.

Mr. RICHARDSON. Did you find out the fact of the discrimination existing from the beneficiaries of these rates?

Mr. KNAPP. No, sir.

Mr. RICHARDSON. How did you get the information?

Mr. KNAPP. Because in this one instance the railroad presidents or their chief executive officers—the men who ought to be held responsible for those things—were examined, and they told the truth.

Mr. ADAMSON. I understand Mr. Mann suggested this trouble, which has been heretofore discussed before the committee, that when you multiply the class of criminals all might claim exemption under the law, and nobody could be forced to testify against anybody else. I wanted to ask you this, if we had not better provide against this offense—as, for instance, it is provided against gambling in the State courts—that no man should be subject to the result of incriminating himself if he testified against the other party.

Mr. KNAPP. That is in the law now, and that I want to call attention to. Now, the difficulty—

The CHAIRMAN. Before you begin on that, will you tell us what differences in conditions existed at this last inquiry, where you were successful in getting this testimony, from the conditions on previous occasions, where you were unsuccessful in eliciting testimony?

Mr. KNAPP. I do not know.

The CHAIRMAN. Were there any differences in conditions?

Mr. KNAPP. I think there was just the difference which I have named, that we went to Kansas City, where the traffic originated, and where presumably these offenses were committed or arranged for, and we called the representatives of the different roads who were located there and in charge of that traffic. They were subordinate officials and they all denied it, and it is not inconceivable that they were truthful in their denials. They might have had the same knowledge that others have, that men in that business had, that there was a discrepancy between the price at which the goods were shipped and the published tariffs, which could not be explained; but that they had any personal knowledge or had any incriminating connection with the illegal transaction was very likely not the case.

Mr. RICHARDSON. They got no benefit from it?

Mr. KNAPP. No, sir; no benefit. That is, when the market price of an article in Chicago is not as great as the market price of the same article in Kansas City, plus the published tariff from Kansas City to Chicago, one is disposed, at least, to suppose that the traffic gets there at a secret rate.

Now, let me speak further of the difficulties—let me go one step further—the difficulties growing out of the fact that the corporation is not itself liable. In the first place, the Commission conceivably can make up an instance and keep calling witnesses and forcing them to testify until they have narrowed the question down to just some few, or perhaps one, of the officials of the company. Then what have you found? Some subordinates, some assistant traffic manager, most likely some clerk, who actually did the thing.

Who wants to indict him, a subordinate, a clerk carrying out the implied if not the expressed orders of his superiors, a man whose position depended on his doing what he did? Nobody wants to send such a man as that to jail or to mulct him with a fine that he could not possibly pay, and it is anomalous, and it does not satisfy one's sense of justice to say that the corporation, the real beneficiary of the transaction, should go scot free, and that the only person who can be

reached is some subordinate agent who is merely in charge of this operation.

Another thing right in that connection. Under the Constitution every man who is examined before the Commission or before any court, and compelled to testify, thereby secures perfect immunity for himself. He can not be prosecuted for that; so that the further the Commission goes in ferreting out the details, the further it goes in letting loose the very men who are guilty. Every man we call is granted absolute immunity.

Now, what happens?

This illustrates another phase of this same question; men high up in railroad circles, men known to you all by name, and many of them personally, came before us in Chicago and admitted exactly what they did, and said that they were personally responsible for it. They were perfectly safe in doing that. Every one of them thereby secured absolute immunity. But when you asked one of those men what particular shipper he paid money to, and on what day, he would refuse to tell. He will say that he does not know, and generally he does not know. What happens, apparently, is this: The president or some executive officer in charge of traffic makes the bargain; he does not attend to the details; he does not know about a particular shipment or a particular payment; and also whatever record there may be made at any time in connection with the transaction, so that the understanding may be known to the parties, is immediately destroyed. In every instance they testified that no records remained, that their books would show nothing, and they themselves, although they admitted the responsibility for what was done, had no knowledge of any particular transaction.

It is idle to suppose that you can apply criminal remedies in the state of the criminal law for the correction of such abuses. It does not happen; it will not happen. But I believe that if the corporation could be indicted, if the officials, the subordinate officials, the competitors, or their representatives, or anybody having knowledge of the transaction could be examined before the Commission and compelled to disclose the facts on which the corporation was liable, then the corporation could be indicted and mulcted with a fine. Until that can be done, and corporation carriers be subjected to large pecuniary losses as a result of these offenses, not much will happen to correct them in the way of criminal remedies.

Mr. STEWART. Do you not think that imprisonment in addition to a fine would have a good effect?

Mr. KNAPP. No, Mr. Stewart, I do not. While I regard these offenses as involving, in many cases, a very high degree of moral turpitude, and I think there are more serious wrongs against order and the inalienable rights of the citizen than burglary or larceny, still we have to take the facts as they are and public sentiment as it exists, and in view of that it is my judgment that punishment by imprisonment instead of being an aid is a hindrance. It is a thing which operates against getting information necessary to convict.

Mr. STEWART. Do you think a fine, however large, would deter these large corporations?

Mr. KNAPP. Yes; and then there is another reason. You can not do anything to a corporation except fine it, and it does not quite satisfy the sense of justice to say that the real offender shall only be fined,

while some paid subordinate in lesser degree may possibly go to jail. Now, I believe that if we could get this law in shape where it would be practically feasible, and in many cases comparatively easy to prove the offense against the corporation, and that corporation could be held to pay a large fine, it would not be simply the pecuniary loss, but the publicity—the fact that the railroad has been indicted and compelled to pay a large fine—would operate as a powerful deterrent, and I do not think we shall get along very far in preventing rate cutting by criminal methods until you gentlemen change the law in that regard.

And still further on that point, as far as I am aware, nobody opposes changing the law in that respect which I refer to. I have not heard an objection to it. I do not know of a railroad man, I do not know a member of the Commission now or heretofore, I do not know an honest business man, who does not agree with everything I have tried to say, and who would not tell you that law ought to be changed so that the corporation should be amenable. It may be that some of these great combines who get these enormous sums in rebates, and who are not now amenable to the law, would oppose the amendment which I advocate, but I do not think that they will come here and tell you that they oppose it.

Mr. CORLISS. What information have you upon the subject with reference to the railroad corporations themselves—the officers of the railroads—as to their position upon that question?

Mr. KNAPP. All that I know about that, Mr. Corliss, is what they tell us. Over and over again railroad officials have said to me, "You can not expect—it is against human nature; appeal to your own experience, your own feelings—you can not expect that I will give testimony that may possibly result in the fining of my associate and friend over here who occupies a similar relation to another railroad to that which I occupy to mine. I am not going to become an informer against him."

But they all say that if the result of the disclosure and prosecution would be a fine against the other man's corporation they would not hesitate to furnish the proof and would actively engage in the prosecution.

That is the statement made to us. You can judge of the truth of it and the probabilities as well as I can.

Mr. COOMBS. Do you not think it would be a great relief and benefit to the railroad corporations if such a law was enacted?

Mr. KNAPP. I surely do. There is no reason why it should not be. And these two amendments, the one which would make the corporations themselves liable, and the one which would make the shipper liable, without the necessity of proving absolute discrimination—these two amendments ought to be made at once, at this session, if no others are made.

Mr. RICHARDSON. If you made a fine upon the corporations, you would have to rely upon the railroads to get the proof.

Mr. KNAPP. Not necessarily. I would call the shipper.

Mr. RICHARDSON. Would it not operate against him and influence him not to tell?

Mr. KNAPP. No, sir; not to the same extent.

Mr. RICHARDSON. Is it not the same thing that you find now in bringing a suit for damages against a railroad? An employec does not like to testify—

Mr. KNAPP. That may be true; but I think it would be immeasurably easier than it is now.

If its agent makes a rebate or makes a secret rate much lower than the published tariff, why shouldn't the corporation be liable? Can anyone furnish a reasonable answer? I have never heard of any.

And bear in mind another thing, which is that the two amendments which I am speaking of now would not increase the power of the Interstate Commerce Commission one iota.

Mr. MANN. If a man wanted to ship a carload of furniture from Georgetown to, say, Albuquerque, N. Mex., could he get a special rate, or would it be local rate all the way?

Mr. KNAPP. That would depend upon whether there were joint through rates from Washington to Albuquerque. If not, he would have to ship at the sum of the locals.

Mr. MANN. Is it a common practice, or is it not, among the railroads in a case of that sort to make a through rate?

Mr. KNAPP. Yes, sir.

Mr. MANN. Where there are no published through rates?

Mr. KNAPP. No, sir; I think not. They have no right to do that. The statute prohibits it, and they would offend the law if they did it, and I do not think it happens.

Mr. MANN. So that where there are no published joint rates it must be the sum of the local rates under the law?

Mr. KNAPP. It must be the sum of the local rates under the law. But, in point of fact, there has come to be such an enormous interchange of traffic, the movement of products is so extensive and so generally distributed, that there are joint through rates applying to pretty much everything, and between all the important places in the United States, or if there are not, then a joint through rate will apply between large centers, and the actual through rate would be made up of the local rate up to the point where the through rate commences. For instance, there might be a joint through rate from Washington to Albuquerque, and not a joint through rate from Alexandria, say. In that case the rate from Alexandria to Albuquerque would be made up of the local rate from Alexandria to Washington and the joint through rate from Washington to Albuquerque.

Mr. MANN. I understood that it was not an uncommon practice, and under this section of the bill the shipper would be liable to a \$5,000 fine.

Mr. KNAPP. All I can say is from my general information. From what I have observed and learned, I do not believe there is any such practice.

Mr. MANN. I thought you would know——

Mr. KNAPP. I do not believe that secret rates, or special bargains, take that form. I do not think it very often happens that the equivalent of the joint through rate is given when there is no joint through rate, because, as I said, there are joint through rates pretty much everywhere, and if there is any considerable amount of traffic the railroads are generally willing, and it is to their interest, to make a joint through rate.

I was saying a moment ago that the passage of these amendments would not enlarge the powers of the Commission at all, not in the slightest. When you make a transaction a misdemeanor, you practically remove it from the authority of the Commission. What I am



asking is that the Federal courts and the Federal district attorneys be furnished with the laws under which they can act. True, of course, the Commission in that case might be able to assist the prosecuting authorities in getting evidence, and might aid them by its agents in conducting trials, but the authority of the Commission is not increased a particle by these amendments. We can not make any order not to pay a rebate. The statute says that it is a misdemeanor to do it. Of course an act of Congress is a good deal more powerful thing than an order of the Interstate Commerce Commission.

Mr. MANN. A year or two ago I had occasion to ship some freight from this city through Chicago to Grand Crossing. The rate given me here was \$25. When it got to South Chicago, it was about \$60, and when it got to Grand Crossing it was about \$70. I paid the freight. I never found out which was the right freight; but the company rebated to me the amount over the rate which they gave to me. Now, possibly under this law I would be liable to a \$5,000 penalty.

Mr. KNAPP. That is conceivable.

Mr. MANN. How could I know; how could I tell in advance? I go to the proper authority and obtain a freight rate.

Mr. KNAPP. I have not had anything personally to do with the preparation of any particular bill. I do not know what you refer to; but I assume——

Mr. MANN. I supposed that you knew that the Nelson-Corliss bill is the one that we are speaking of.

Mr. KNAPP. I assume, of course, that the shipper is not liable unless he knowingly gets a preferential rate. I certainly am not here asking nor advocating that if a shipper goes to a freight agent and asks what the rate is and is told and pays that rate, honestly supposing that to be the lawful rate, that he could be indicted and fined if it turned out afterwards that that was not a legal rate.

Mr. DAVIS. Would the case that Mr. Mann suggests be a rebate in that sense of which we are speaking? Would not that be rather a refund?

Mr. MANN. It would depend upon what was the proper rate. I do not know and never did know. I know that I made a kick.

Mr. DAVIS. Would that not be giving back a part of the original rate, what was originally charged, while this would be refunding merely the excess over the original charge?

Mr. KNAPP. It would be refunding the excess over the tariff rate.

Mr. MANN. Perhaps I got the wrong rate here. Perhaps the rate that I paid was actually the tariff rate. I never made any further inquiry.

Mr. KNAPP. It was very likely an overcharge. We correct those matters every week in the year.

Mr. ADAMSON. That is what the innocent would have to depend on. He is presumed to know the law, but not the fact.

Mr. KNAPP. It is perhaps not an inapt way of putting it.

Mr. STEWART. Would not Mr. Mann be affirmatively guilty, having accepted this rebate?

Mr. KNAPP. No, sir; I do not think that, because I think it would have to be alleged and proved on the trial that he knew what was the rate.

Mr. STEWART. Would not the fact of his receiving the rebate be sufficient to go to the jury, unless he rebutted the presumption of guilt?

Mr. KNAPP. That would have to be proved on the trial.

Mr. STEWART. I mean if they had that proof alone would it not be sufficient for the prosecution to go to the jury with if Mr. Mann offered no defense?

Mr. KNAPP. Possibly it would.

Mr. MANN. Clearly, in that case, if the railroad company was guilty I was guilty, under the provisions of this Corliss bill.

Mr. KNAPP. Yes, sir, I think—I do not know—that might not be so, Mr. Mann. That is to say, the railroad agent might know that the rate he gave you was not the published rate, and you might honestly think that it was.

Mr. MANN. Anyhow, you think that whatever bill is passed should so provide that the shipper should not be punished unless he intends to offend?

Mr. KNAPP. Certainly not. As a matter of practice there are a great many shippers—particularly the smaller shippers, the infrequent shippers—who do not know what the published rates are.

Mr. ADAMSON. I do not think that language only would change the situation at all, because that is common law. He is presumed to know what the law is, and if your Commission is ever authorized by law to make rates, then rates are laws, and not facts, because it is legislative.

Mr. KNAPP. That is another question. We may come to that later. I am not prepared to accept that proposition.

Mr. ADAMSON. He says that it does not add anything to the law as it exists now; that a man can not be convicted under the existing law unless he has the intention to do wrong.

Mr. KNAPP. Yes, sir; certainly not.

Mr. SHACKLEFORD. What you say is that the presumption of the law to-day is such that it throws the negative upon the shipper—puts the burden on the shipper to prove that he is not guilty?

Mr. KNAPP. All I can say is that I am not advocating the proposition that a shipper is liable to be fined, not knowing what the rate is, who pays a rate that is asked, honestly believing at the time that it is the proper rate.

Mr. MANN. The difficulty we find is in providing some means by which the guilty should be punished and the innocent not be punished under the law.

Mr. KNAPP. It seems to me if the language is, as I assumed, of course, that it was, that the shipper who knowingly aids or abets the carrier in making a secret rate shall be punished—it seems to me that is the situation—

Mr. ADAMSON. If you are going to regulate rates by law, do you not think it is better for the shipper to look to constituted authority for rates and not to the railroads?

Mr. KNAPP. That would be impracticable. The shipper would not want to send to the office of the Interstate Commerce Commission to find out what the rate is before he ships.

Mr. ADAMSON. Do you not think it would be to his interest to do it, or very wise to do it?

Mr. KNAPP. Of course the present law is, and there is no proposition to change it, that the carrier shall post in two conspicuous places in every one of its stations the tariff, so that the shipper has an opportunity to ascertain what the rates are.

Mr. ADAMSON. Yes; that is giving them their constituted authority in that way.

Mr. KNAPP. Yes, sir; in the manner that the law provides it shall be furnished him for that purpose. But what I would say is that in the ordinary course of business the large shipper knows exactly what the rates are between all points, and he knows to the last cent what the rates are and the route and the combination which will give him the lowest possible rate under the tariff.

But the occasional shipper may be a man who, if he consulted the tariff schedule, would have difficulty in knowing what the rate would be on a cargo of furniture, for instance, and he would naturally ask the agent what it was. Now, if he takes in good faith what he is told and pays what he ought to pay certainly he ought not to be indicted.

Mr. MANN. I do not see how putting the word "knowingly" in there would help that man out. The guilty action lies in avoiding the tariff. Now, the language of the Corliss bill is:

Any person who procures, or solicits to be done, or assists, aids, or abets in the doing of any of the aforesaid acts—

If a man gets a rate, he assists in doing the act which is declared illegal. It does not make any difference if he knows it is illegal or not. He knows that he does the act, and he does that part of it knowingly. That is all your "knowingly" refers to.

Mr. KNAPP. He knows the rate he gets, but he may not know it is or is not the published rate and the rate that he ought to pay. That is what "knowingly" means.

Mr. MANN. Putting "knowingly" in there would not affect it any. Under the bill we have been discussing, and in a case of that sort, the court has no judgment in the matter except finding the man guilty and ordering him to pay a fine of \$5,000.

Mr. STEWART. In the Corliss bill it does not say that the shipper must "knowingly" violate the published rate.

Mr. KNAPP. I supposed that it was there, as I say. It is in the present law. The word "knowingly" is used in the present law, and I suppose with that meaning and for that purpose.

Mr. MANN. I suppose you would not say that the traffic manager of that railroad company could escape. He said that he gave me the rate. I did not know what the published rate was.

Mr. KNAPP. The individual might.

Mr. MANN. Oh, no.

Mr. KNAPP. I do not know; he might do so; but query: Whether the corporation could escape?

Mr. RICHARDSON. Would not Mr. Mann, in the case he has used as an illustration, where he accepted that rate, where that rebate was given him and he accepted that, make himself a conspirator and jointly liable with the company?

Mr. SHACKLEFORD. Not if he received back an overcharge.

Mr. KNAPP. Perhaps I do not quite appreciate your question.

Mr. RICHARDSON. Would not he be an accessory after the fact if he participated in it, and now when he received it back if it was an illegal charge, an unjust one, would he not make himself liable?

Mr. KNAPP. The offense is not in doing the thing, but in "knowingly" doing it.

Mr. RICHARDSON. Then when he accepted the rate would he not—

Mr. KNAPP. No, sir; he could not be made an accessory after the fact after the offense was committed, because he did not know at the time that the rate he paid at the time was not the published rate.

Mr. WANGER. As I understand it, the rebate may be perfectly justifiable and proper to correct an improper charge?

Mr. KNAPP. Yes, sir; and it is often our experience. These matters are adjusted very frequently through our office, where there has been an overcharge.

Mr. ADAMSON. But that is not what you technically call a rebate?

Mr. KNAPP. We look it up, and if it appears that there is an overcharge the matter is always adjusted.

Mr. ADAMSON. That is more a matter of mistake?

Mr. KNAPP. Yes, sir; that is an entirely different question.

Mr. ADAMSON. If you are going to invoke the pains and penalties of the criminal law and quasi-criminal law, do you not think you had better go at it under the rules of criminal law, and not be too squeamish about what you do? People are convicted every day under laws they never heard and did not know existed because they do things, and if you are going at this to remedy crying evils, had you not better make it to the interest of everybody to look and find out what the laws provide?

Mr. KNAPP. I am obliged to you for asking that question. It reminds me of what I had in my mind, but had overlooked so far.

In a sense you can, of course, test the propriety or value of a law by what could possibly be done under it; but ordinarily when you are dealing with a subject of this kind, or legislation of this kind, you take into account the ordinary experience of men. Put it exactly in the form, suppose, that you read in the Corliss bill, and the actual taking of a less rate, although innocently done, would subject a shipper to an indictment and fine; but do you think it would ever happen that such a man would be indicted as a matter of actual experience?

Mr. MANN. It has happened that innocent men have been indicted and found guilty.

Mr. KNAPP. Yes, sir; and as Mr. Adamson remarked, if you have an emergency to deal with, a permanent and distressful situation of affairs to deal with, perhaps you ought not to be too squeamish in applying the remedy, because occasionally an innocent man would be punished.

Mr. MANN. You know what the old maxim is?

Mr. SHACKLEFORD. Could you not obtain your remedies more easily if everyone was exempt except the corporation itself? Would not that promote the obtaining of testimony? Let the shipper be free, and then there is no reason why he should not disclose any transaction regarding an illegal rate, if nobody except the corporation itself, the carrier itself, were made amenable to the penalties. In our State we have a law against bribery, and the man who gives the bribe and the man who takes the bribe are both amenable under the law, and neither one has any motive for telling what has been done.

In this matter you say that both sides shall be punished, and you shut up both sides, and you have no means for getting the testimony of either; but if the shipper shall be liable, but the carrier alone, you will arrive at some way of meting out the punishment.

Mr. KNAPP. I do not care to take the time of the committee with any extended argument on that question.

Mr. WANGER. Do you think the remedy by indictment is the most expeditious and effective? Suppose a corporation was made liable to pay, say, at least the sum of \$5,000 for each offense, and suppose two or three times the amount of the preference, the rebate or the refund granted to be recovered in an action at law, would not that be a far greater deterrent; would not the proposition come right home to the officers of the corporation, "We may have to pay several hundreds of thousands of dollars if this thing is discovered?"

Mr. KNAPP. I think so.

Mr. ADAMSON. Do you think, under Judge Shackelford's idea, that it is all right to make it criminal for the corporations to do a thing and then offer inducements to all the balance of mankind to induce them to do it? Would not that be the Judge's idea?

Mr. KNAPP. I must say that such a proposition does not at the first blush strike one as fair, where two parties are engaged in a transaction and one of them is held to commit a crime and the other not.

Mr. ADAMSON. If a thing is wrong, ought not everybody who has anything to do with it be subject to prosecution?

Mr. KNAPP. Certainly, that is true. But on the other hand, the wrongdoing is of such a nature that the most effective and useful method of correcting it or preventing it ought to be adopted. That method may be by allowing one of the parties to escape. Now, if that is the proposition, I am not here to oppose it by any means.

Mr. SHACKLEFORD. Not to punish crime, but to relieve the shipping public from these evils; that is the thing that you are trying to do.

Mr. ADAMSON. You are talking about making criminal law, though?

Mr. KNAPP. Yes, sir.

Mr. ADAMSON. It ought to be made with equality, justice, and in accordance with the time-honored rules of criminal law.

Mr. KNAPP. I have assumed, as I say, that the law would remain as it is, making the shipper liable as well as the carrier; but if it is to remain in that way, then I want the shipper liable for departing from the rate without being obliged to show that an actual discrimination in his favor resulted.

Mr. ADAMSON. It should result, then, in making the shipper liable, given this view of it, that where you go and induce the carrier to give a reduced rate you injure me, and I have just as much fault to find with you as I have with the corporation, and you are just as guilty as the corporation.

Mr. KNAPP. Yes, sir; because the man who pays the higher rate suffers from the fact that his business rival has the same service at a lower rate. He, in a sense, is the real beneficiary. The railroad simply loses so much revenue; but it accepts the lower rates in order to get the business at all.

Of course a railroad is not going to give a reduction and suffer under a cut rate if it is sure to get the traffic anyway. It makes that secret bargain in order to get the business from some other road. The revenue of the railroad is depleted, and the man who really profits is the shipper who gets the cut rate, and I think in many circumstances the moral turpitude of the shipper is greater than that of the carrier. And it does not exactly satisfy me, speaking for myself alone, to say that in such a situation some subordinate traffic managers can be fined, and the men who have put hundreds of thousands of dollars in rebates into their pockets can not be reached. That may

be the most effective way to deal with the evil, but I am not here to advocate it.

The CHAIRMAN. Suppose a case of a conviction against the corporation, would you levy the punishment against the corporation or against the agent of a corporation?

Mr. KNAPP. I would do just as they do on the other side. I would make the corporation liable, and also its officers and agents, and also the shipper liable, and also his officers and agents. But I think there is much in keeping them both in from this point of view. Now, see what the actual situation is. Remedies of this kind must be applied by the Federal courts and the Federal district attorneys. All that the Commission can ever do is to furnish information on which they shall proceed. Now, each situation therefore ought to be inquired of and dealt with in reference to its peculiar circumstances, and when a case of extensive rebates or cut rates is brought to the attention of the Federal authorities, it might be a case where, in their judgment, the more guilty party was the shipper and the one more easily convicted the carrier, or it might happen that the more guilty was the carrier and the one more easily convicted was the shipper, and it seems to me that those who are charged with the responsibility of enforcing the law ought to have the opportunity, as they practically would under this proposed law, of deciding against which one of the parties they would proceed.

Mr. WANGER. I imagine it would not be very appropriate to proceed against both.

Mr. KNAPP. Yes, sir; ordinarily you have probably got to call only one to prove the case against the other, and when you call one and compel him to testify, he goes scot free.

Mr. WANGER. He could refuse to answer on the ground that he would incriminate himself.

Mr. KNAPP. No; he can be forced to testify, and being forced to testify, he is granted immunity. That has been taken up to the Supreme Court of the United States twice, and we have got that settled. The Commission can subpoena any person supposed to have knowledge of a wrongful transaction of the kind we are now discussing and compel him to testify, and if he refuses to answer we can go to a Federal judge and get an order compelling him to testify, and if he still refuses he may be sent to jail; he can not excuse himself any longer, because the statute which it was held gives him absolute immunity secures him his constitutional rights, so that he can be compelled to testify. And, as I have explained, of course everybody we call is granted immunity, and it is a practical question whether in a case of this kind the Commission ought to go on—

Mr. ADAMSON. Do you mean that he is entirely relieved from all danger of being tried and from the penalties in that case, or do you mean simply that that testimony shall not be used against him?

Mr. KNAPP. That was the law originally. That was no part of the interstate-commerce law, but it was a law that had been on the statute books for many years, that his testimony could not be used against him. The Supreme Court of the United States held that it was unconstitutional, that part of that statute did not secure to him the immunity which the Constitution provided for. If he was compelled to testify, that the knowledge hereby obtained might furnish clues which would lead to his conviction later on without the use of that testimony, and

that in order to secure him his constitutional right the offense which is committed must be considered to be condoned by the fact that he is called.

Mr. ADAMSON. I do not remember the case, but I would like to know if it was taken into consideration the fact that his testimony might tend to blacken his character—

Mr. KNAPP. If you will read the decision of the Supreme Court on that question you will find that very fully discussed. They said that society does not owe the duty to a man, who, under the Constitution, refuses to testify and confesses that he is a criminal, to protect his reputation. If it protects his person and his pocketbook he has had his personal immunity. That is all settled.

Now, gentlemen, that is all I care to say upon that branch of the case, upon the defective and unworkable condition of those provisions in the law which seek to prevent rate cutting and secret contracts. And those are two changes which, in my judgment, ought to be promptly made. This Commission called the attention of Congress to this defect in the law directly that it was ascertained; pointed it out fully in its reports to Congress, and has repeatedly done so since, and yet, now, for more than ten years we have been waiting for Congress to so change this law that the corporation, the carrier, could be indicted and punished.

And the failure, as a practical question, of efforts to enforce the criminal law is largely because the corporation carrier is not liable, and the failure, the inevitable failure, to convict the shipper results from the fact that he is not liable unless you can show not only that he got the lower rate, but that that lower rate operated as a discrimination in his favor and against somebody else in the same place and at the same time. And that, practically, you can not show. You can not show it certainly in the worst class of cases, where great aggregations and combinations of shippers use their influence to get secret rates and preferential rates, for there they all get about the same thing.

Now, I say do one of two things; either leave the shipper out entirely, or else make him liable, the same as the carrier, if he knowingly takes a rate.

Mr. DAVIS. I was going to say, from my limited idea of the criminal law, I understand that it requires a good healthy condition of public sentiment in order to make a criminal law operative. Now, do you not think that if you undertake to make the shipper a criminal because he has done the best he could, that you are putting something in the law that will not stand; that evidently they must do the best they can with the railroad, and that you will never get that law enforced?

Mr. KNAPP. No, sir; because you assume that the shipper has done the best he could, and that is the case of the infrequent shipper. The thousands and millions of dollars paid in rebates are paid to men who do not need it and ought not to have it, and know perfectly well that they are violating the law.

Mr. DAVIS. Suppose some infrequent shipper, who rarely ships and does very little business that requires shipping, gets the best rates that he can. Suppose I want to ship some books and furniture from Washington and I go and get the best rate that I can, and I can not study

these things, I am made a criminal because I have gotten a rate less than the published rate.

Mr. KNAPP. I have said that I do not advocate that, and I do not think it is the intention of the legislative proposal.

Mr. DAVIS. Would it not make that statute practically inoperative?

Mr. KNAPP. No, sir; I do not think it would make it inoperative.

Mr. DAVIS. I do not think anybody would be proceeded against. I do not think you could find a district attorney who would prosecute a man who he knew had innocently and unintentionally gotten a rate less than the published rate.

Mr. SHACKLEFORD. He was not supposing that that rate he spoke of had been gotten innocently.

Mr. KNAPP. That is what I understood.

Mr. DAVIS. No, sir. Suppose I knew that the rate that I was getting from Washington to my home was not the published rate, and I should go and get the best rate that I could. Now, as the law stands I would not be a criminal; per se that would not be a criminal act. But you are going to make it criminal by enactment, and the American people have always supposed that the individual not only ought to make the best terms that he could with the railroad, but that it would be shrewd for him to do it. Now, you are going to make that per se a crime which is not per se a crime, and therefore it would make the law very unpopular.

Mr. KNAPP. I do not think so. I think nine hundred and ninety-nine business men out of a thousand do not want anybody to be able to get a secret or preferential rate.

Mr. DAVIS. One other question. You are going to use the word "knowingly." He must knowingly violate this law. The shipper must do it. Now, if that word were not there, the law, as I understand it to exist, would require it to be done knowingly?

Mr. KNAPP. I do not understand that to be the law.

Mr. DAVIS. How are you going to define the requisite knowledge and the means by which he must derive his knowledge?

Mr. KNAPP. That is a question of fact for the jury. This man knows that he got a rate not authorized by the tariff.

Mr. DAVIS. In order to make that operative at all, you would have to do it in this way: The rate must be prescribed and published, and if the rates were prescribed and published everyone would be charged with knowledge of them. Would you not have to do it that way; and if you did, would you not make the law unpopular?

Mr. KNAPP. No, sir; I do not think so. I think a large majority of the business men of the country are in favor of it, in favor of just what I am advocating. I think there are a few, and they are the men who least need the favor, and ought not to get it, who do not want it that way. They want to pocket the rebates. It is not the rebates, gentlemen; it is not simply the thousands and hundreds of thousands and millions of dollars which certain concerns get out of the public tariff; that is not what they are after. Of course whatever comes in that way comes in handy, and it amounts to a vast balance; but it is the command of the markets which they get, because their traffic is carried lower than that of other persons, which is valuable to them.

Mr. DAVIS. It is the large shipper you have in your mind?

Mr. KNAPP. Yes, sir. The small shipper to-day does not get any rebates.



Mr. DAVIS. Suppose he did get them?

Mr. KNAPP. He can not.

Mr. DAVIS. Suppose he got a less rate at the——

Mr. KNAPP. He can not do it.

Mr. DAVIS. Do you not make the entire shipping public uneasy, do you not create in them a sort of uneasiness, which if you put them all——

Mr. KNAPP. The uneasiness arises from the suspicion that the larger and the more powerful rival is getting a rate which the smaller man can not obtain. You let the business men of this country understand that no combination of shippers, no matter how powerful or how immense their business may be, can get one mill off the published tariff, and you will give a satisfaction and an assurance to the business world that nothing else can assure.

Mr. COOMBS. Is there any section of the country that is benefited over another by the rebate?

Mr. KNAPP. That is not easy to answer. If you will put a concrete question——

Mr. COOMBS. I want to ask you questions which are hard. We want the knowledge that you have, and I want to ask you just as hard questions as I can.

Mr. KNAPP. Very well. We were discussing this question before you came in, and we were mentioning the case where it appeared that habitually, for years, the packing houses on the Missouri River and at Chicago got very much lower rates than the published tariff. Now, what is a small concern at Indianapolis and Cincinnati or Des Moines or Davenport trying to do a little packing-house business against these packing houses that have 10 cents off on the tariff? They have to pay the published tariff. Railroad men do not give rebates to the little fellow.

Mr. STEWART. As a matter of fact, under the new law the district attorney would only look after the occasional shipper?

Mr. KNAPP. I said in answer to Mr. Mann's question that I did not think the district attorney would ever try to indict an incidental and occasional shipper who honestly and inadvertently got a rate which proved to be lower than the published tariff.

Mr. STEWART. It is only the large and continual—professional—shippers who affect this tariff?

Mr. KNAPP. Yes, sir.

Mr. COOMBS. What has the district attorney to do with it?

Mr. KNAPP. As a matter of fact he has not had much to do heretofore, because he could not get any facts on which to proceed.

Mr. COOMBS. You are going into facts now and not into the law. What would he have to do with it provided the law was amended as you want to have it amended?

Mr. KNAPP. If he had information leading him to believe that a given carrier had granted rebates to a shipper he would go to work and investigate to prove that fact.

Mr. COOMBS. If he was left to his own judgment he would be affected by the sentiment of the particular community?

Mr. KNAPP. Very likely; I think that might happen.

Mr. STEWART. Might he not be affected by the charge of the judge and the judgment of that particular court?

Mr. KNAPP. This gentleman refers to whom he should select for indictment.

Mr. COOMBS. These things would be done in this way. From your body you would bring such information before the Department of Justice as would result in instructions to the district attorney of some other place to bring proceedings. Is not that about the way it would be done?

Mr. KNAPP. Yes, sir; I suppose practically it would work out that way.

Mr. COOMBS. That is the general routine; that is the way the district attorneys bring indictments?

Mr. KNAPP. Certainly.

Mr. COOMBS. Where there is a central body which has supervision of matters the information upon which the district attorneys act comes before that body. Is not that the rule?

Mr. KNAPP. I suppose it is.

Mr. COOMBS. The district attorney never brings originally a case relating to a violation of the internal-revenue law, for instance; he goes by instructions to bring certain indictments?

Mr. KNAPP. No; if the postal laws or the import laws are violated I assume that some Government official having charge of the administration of those laws gets hold of the facts and goes to the district attorney, and he becomes the prosecutor.

Mr. RICHARDSON. Is it not your observation that under the operations of the interstate-commerce law for the past few years there has been a greater improvement in the conditions between the railroads and the shipping public?

Mr. KNAPP. In what way?

Mr. RICHARDSON. In all respects, in regard to rebates and everything else, is it not in a better condition to-day than ten years ago? Under the conservative policy which has been pursued, is not the relation of the railroads with the public far better than it was ten years ago?

Mr. KNAPP. I wish I could affirm your view, but I can not.

Mr. RICHARDSON. Then the Commission has accomplished very little good during the last ten years?

Mr. KNAPP. That does not follow.

Mr. RICHARDSON. Is there not an improvement?

Mr. KNAPP. I think the condition is very much better than it would be if there was not any law nor any Commission.

The CHAIRMAN. The hour for adjournment has arrived, Mr. Knapp and if you will now suspend you will have the stand when we resume to-morrow.

Mr. KNAPP. Very well.

Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, April 21, 1902, at 10.30 o'clock a. m.

---

WASHINGTON, D. C., *April 22, 1902.*

Mr. KNAPP. Some little time ago the Commission arranged for taking the testimony in certain cases at St. Louis and elsewhere, beginning on Friday of this week. Two of my associates, Mr. Prouty and Mr. Fifer, are going to attend to that duty. They will be absent for

at least a week for that reason, and to accommodate them I respectfully ask that they may be heard this morning and that I may be permitted to defer any remarks of my own until a subsequent meeting of the committee.

The CHAIRMAN. That arrangement will be satisfactory to the committee.

### STATEMENT OF HON. CHARLES A. PROUTY, INTERSTATE COMMERCE COMMISSIONER.

Mr. Chairman and gentlemen of the committee, as Chairman Knapp has stated, Governor Fifer and I are obliged to leave Washington tomorrow, and if we say anything we will be compelled to say it now. I had no desire, and have no desire, to address the committee; but there is one phase of this question that my associates think ought to be presented to the attention of the committee, and they desire me to present it.

I wish to say, before I begin that, a single word in reference to the matter which Mr. Knapp discussed yesterday, and that is the preventing of the payment of rebates. He called your attention to necessary amendments to the act in order to secure that end by criminal enactment. That is not to my mind the only way in which the payment of rebates can be prevented, nor is it the only way in which the bill that you have before you, which is called the Corliss bill, will effect that object.

Certain injunctions have been asked for and a restraining order has been granted to compel carriers between Chicago and Kansas City to observe the published rates. The effect of that injunction, if it is made properly and can be enforced against the carriers, is simply to raise the tariff rate which the packer pays from Kansas City to Chicago 5 cents. I believe that a more just way to reach that proposition is not to compel the carrier to maintain his published tariff, but to compel the carrier to publish and to accord to all the world the lower tariff which it has accorded to the favored shipper.

In other words, the only effective remedy, or one of the most effective remedies, which can be applied to prevent the payment of the rebate is to invest some tribunal in some way with the power to compel the carrier to put into effect and maintain in effect, under certain circumstances and for a certain time, the secret rate, the lower rate, which it has accorded to the preferred shipper. Any other remedy simply results in making the rate so much higher to the general public.

Mr. COOMBS. Excuse me; but the constitution of California established a railroad commission, and one of the provisions of the constitution is that that should be done. This commission is a judicial body or a quasi judicial body, has judicial functions under the constitution. Now one of the propositions in that was this: That whenever the railroads gave a rebate or lowered the rate with reference to any person and with reference to any points that that should become the basis of all future regulations and they never could thereafter raise those rates. You know the history of that?

Mr. PROUTY. I should suppose that provision would clearly be unconstitutional.

Mr. COOMBS. You think what?

Mr. PROUTY. I should suppose that that provision would probably be unconstitutional.

Mr. COOMBS. Do you know what the result of that was?

Mr. PROUTY. No, sir; that is not my proposition.

Mr. COOMBS. You say that is not your proposition?

Mr. PROUTY. No; it is not my proposition at all.

Mr. COOMBS. I understood it was; I misunderstood you.

Mr. PROUTY. No; as you stated, the law of California provides that if a railroad allows a lower rate than the published rate, that that shall be the basis for all future time.

Mr. COOMBS. I do not mean to state it that way exactly; but I mean to say that they shall not raise the rate.

Mr. PROUTY. A provision of that sort might bankrupt every carrier in California; it might deprive every carrier in California of his property without due process of law, and I say that that is clearly in violation of the fourteenth amendment to the Constitution of the United States.

The CHAIRMAN. Would it be, if they had voluntarily fixed that rate themselves? Would there not be a distinction between a rate made permanent—simply a rate that they had fixed and made permanent—and an arbitrary fixing of a rate by any other tribunal that would be confiscatory in its nature?

Mr. PROUTY. With respect to that particular tribunal, that might be so and might not be so held; but you must remember that the rates of one carrier necessarily fix the rates of every other carrier in competition with that carrier. If one line makes a rate from Chicago to New York, every other line makes a corresponding rate from Chicago to the Atlantic seaboard.

Mr. RICHARDSON. You say you think it is unconstitutional. That would deprive him of his property, would it not?

Mr. PROUTY. My own impression is it would be confiscatory, but whether confiscatory or not it would be unjust. But it is not unjust to apply the remedy within certain limits, because the railroads must take their chances on their competitors, and this is the only remedy that the railroads themselves have not applied with any degree of effectiveness to stop rate cutting. Take the Joint Traffic Association. It embraces all the lines which operate between Chicago and the Atlantic seaboard. It was managed by a board of managers. One of the things which that board of managers had power to do was to put in the rate over all those lines, and every line was obliged to observe that rate until it was taken out.

When rates became demoralized the only way the traffic association had of stopping that demoralization was to reduce the rate, and that was what they invariably did. And Mr. Callaway, of the New York Central Railroad, once said to me—I think it was in the presence of all the Commission—that that was the remedy; that no rate could be maintained that was radically too high, and that you had to reduce a rate to its proper basis or below its proper basis before you could secure its maintenance.

Mr. RICHARDSON. Would it not have this effect, also, if I catch your meaning correctly? As I understand it, a railroad that negotiates for a rebate of course does that secretly, that is a secret matter; it is prompted by the desire to take the freight from some other railroad.

Mr. PROUTY. Yes, sir; to get that traffic.

Mr. RICHARDSON. Now, it intends to make up what it loses by that rebate by charging somewhere else. So, if you were to establish the

rebate as a standard by which the railroad was to be governed, you would right it?

Mr. PROUTY. I think that is the most effective way of righting it. I do not think a criminal act can altogether right it, but I do not think there is anything that comes nearer to it than the power to make a railroad charge during such time as may be right and reasonable, and under such circumstances as may seem right and reasonable, the rate which it has accorded to the favored customer.

Mr. RICHARDSON. Does that not lead to the fact that you must make rates in some manner elastic?

Mr. PROUTY. What do you mean by the term "elastic?"

Mr. RICHARDSON. Between two given points, a maximum and a minimum.

Mr. PROUTY. Do you mean you should have one rate by one road and another rate by another road?

Mr. RICHARDSON. No.

Mr. PROUTY. One rate for one shipper and another rate for another shipper at the same time?

Mr. RICHARDSON. Yes; that is what I mean.

Mr. PROUTY. That is entirely foreign to the principle of the act regulating commerce. The English court has held that under the provisions of their act, which is similar to ours, you may accord to a shipper with a hundred cars a day a better rate than that accorded to a shipper with only one car of traffic a day. We hold in the United States that that matter can not be taken into account; that the little shipper, the little producer of dressed beef, who produces one car of traffic a day, or one car a month, is entitled to exactly the same rate on that car at the time he ships it that is accorded to the great packing house that gives a hundred cars a day. There is an inconsistency, and if you regard a railroad as a business proposition simply, which goes into the market and buys and sells its products, you can not defend that provision of the law. But the theory of this is that the railroad is a public servant, and it ought to accord to all shippers alike the same rates.

Mr. RICHARDSON. Can not you go a step further and say it performs a Government function?

Mr. PROUTY. I think so.

Mr. RICHARDSON. And it must be held to perform those functions just as the Government does?

Mr. PROUTY. I think so. Everybody does not agree with me there, but that is my idea.

Now, one thing in reference to one question asked Mr. Knapp yesterday, and that question was this: Mr. Knapp stated that the Interstate Commerce Commission had obtained testimony in Chicago last January, and I think last December, showing that rebates had been paid by certain railroads and to certain shippers, and the question was, Why had not these railroads been punished, and why had not these shippers been punished?

I want you gentlemen to distinctly understand what the Commission can do in that case and exactly what it can not do.

All the Commission can do under the law as it stands is to employ an attorney and request the Attorney-General and the district attorneys in the different districts of the United States to prosecute these offenses. We took this testimony; we employed an attorney whom

we believed to be a very competent one; we sent the testimony to the district attorneys in various districts where the offenses were committed, and we sent it to the Attorney-General of the United States.

Now, that, gentlemen, is all the Interstate Commerce Commission can do. I do not know who will be convicted, I do not know whether anybody will be convicted, I doubt very much whether anybody under this law as it stands can be convicted, but that is all that the Interstate Commerce Commission can do in the premises.

Mr. MANN. Has that matter been taken up before the Federal grand jury at Chicago or elsewhere?

Mr. PROUTY. I do not think it has yet; but, as I have said, that is a thing we have no control or jurisdiction over. We have instructed our attorney to proceed with all possible diligence and I suppose he will do so. But he is subject to the control of the Attorney-General of the United States.

Mr. MANN. Do you think they would proceed with any more diligence if you would give them a little more law?

Mr. PROUTY. No, I do not; but I think the amendment Mr. Knapp spoke for yesterday would be a little different kind of law which could be used to prevent the payment of those rebates. We can prove that every railroad operating between Kansas City and Chicago has paid those rebates. We can show, and the testimony shows, that in certain cases they paid, I will say for a case, 500 different shipments.

That can be proven. If this law absolutely provides that the corporation is subject to a fine of not less than \$500 for the forfeiture for every shipment made at the reduced rate, if that was the law, I do not think the shipment would ever be made at the reduced rate, because I do not think the railroad would dare take this chance; and if it did take this chance I think it could be fined in a substantial way and that the thing could be stopped, at least in a measure.

Mr. MANN. Your position, then, is that if a rate is fixed by the Commission, say, for two years, that a railroad company which is willing to make a lower rate shall not be permitted to do so at the risk of a penalty of \$5,000 for each time it transports at the lower rate?

Mr. PROUTY. My position is this: The law requires every carrier to publish whatever rate it makes. If the Santa Fe Company desires to make a lower rate than 23½ cents, it can publish that rate and put it into effect. This law says it shall not put that rate into effect unless it does publish it. My position is that it should simply be compelled to comply with this law or that the law should be amended.

Mr. MANN. This bill provides that the Commission shall fix the rate and that that rate shall remain operative for two years.

Mr. PROUTY. This bill—I have not read the bill, so it is a little reckless for me to say what it provides—

Mr. MANN. Then it seems the Interstate Commerce Commissioners have not taken the opportunity to read the bill—

Mr. PROUTY. Ordinarily when a bill has been referred to this committee a copy of it has been sent to the Interstate Commerce Commission with the request that the Commission read it and with the request that it (the Commission) come before this committee and present its views on the measure. That was not done in this case. We were invited the other morning to appear here, and we came here in obedi-

ence to that invitation. The chairman said yesterday that you had several bills before you for consideration.

I do not know that we are speaking to any particular bill. We are speaking to the general proposition of railroad regulation, as I understand it. But I suppose I do know, in a general way, what the Corliss bill is, because I suspect that I did read the bill upon which it is founded. I do not think the Corliss bill does exactly what you said. I think the Corliss bill does this: If a man claims a rate is high, or is wrong, he makes his complaint to the Commission. If the Commission, after a hearing of that case, after taking testimony and hearing all that is to be said in the case, sitting as a board of arbitration, comes to the conclusion that that rate is high, then it may order the carriers to make a lower rate for the future, which shall be operative for two years, or not to exceed two years. That order of the Commission is subject in all cases to review in Federal courts.

Mr. RICHARDSON. The order is not suspended, however, while you are taking it to the Federal courts for review?

The CHAIRMAN. I want to interrupt you one moment, right here.

Mr. PROUTY. Certainly.

The CHAIRMAN. I think the statement you have just made is an unfair one. Some days ago I directed the clerk of this committee in person to go to the chairman of your Commission and present the compliments of this committee and suggest that these hearings were in progress and that we would be glad to hear from the Commission. I learned afterwards, incidentally, from a member of the committee, that that had been regarded as offensive to the Commission. I then wrote to the Commission as politely as I knew how, asking that they would appear here. The reason why no bill was sent was because of the supposition, I suppose in the minds of every member of this committee, given to us through the newspapers and otherwise, that this was a bill prepared by the Commission. It was certainly not for any purpose of affronting the gentlemen that compose that Commission, for whom I have, for whom every one of us have, I think, the highest respect.

I know I speak for myself in that way; and for some of the members of the Commission, those I know, I have the warmest friendship, and I can not but think that your remark was a gratuitous one and entirely undeserved by this committee.

Mr. PROUTY. I intended that remark in no spirit of criticism to the committee or to any member of the committee. I was asked by a member of this committee if I had read this Corliss bill, and I told him I had not, and I told him why.

The CHAIRMAN. As I understand it, inferring that the reason why you had not done it was because an indignity had been put on the Commission.

Mr. PROUTY. No; I do not so intend to say and I do not so think. I simply stated the fact that hitherto—before this session—whenever bills of this kind have been introduced, either in the House or in the Senate, it has been the uniform custom to refer those bills to the Interstate Commerce Commission. This year that has not been done. Now, why it has not been done I do not know.

The CHAIRMAN. I think there are three members of that Commission that would not accuse me of any disrespect. Two of the gentlemen

on that Commission I have not the honor of the intimate acquaintance with that I have with the other three.

Mr. PROUTY. I certainly should not, for I have no reason to. I stated the fact as it existed, for the reason of another fact which Mr. Mann seemed to think as improper on my part.

Mr. MANN. I do not think anything you have said is improper.

Mr. RICHARDSON. Now, the last question I asked you.

Mr. PROUTY. I have forgotten what it was.

Mr. RICHARDSON. The question was: When the Commission fixed the rate and the railroad wanted it reviewed by the Federal court, that your order fixing the rate was not suspended at all but continued to go on. You favor that, do you?

Mr. PROUTY. I do not know what the provision in that respect in the Corliss bill is.

Mr. RICHARDSON. That is the provision in the Corliss bill.

Mr. PROUTY. You say pending the review of the court the order is enforced?

Mr. RICHARDSON. That the order is enforced pending the review of the court, yes; and then if the railroad takes it to the Supreme Court of the United States, the order still goes on for two years; the two years may expire before the Supreme Court passes on it; that is the effect of the Corliss bill.

Mr. PROUTY. I had expected that any bill which passes would contain the provision allowing the court in its discretion in all cases to suspend the effect of the order pending proceedings in review. Now, just what the provision of this bill may be I do not know.

Mr. RICHARDSON. That is different from the Corliss bill.

Mr. PROUTY. That is the provision that I have expected would be incorporated in any bill that might be reported by this committee or that might be passed by Congress.

Mr. RICHARDSON. In other words, the effect of your position, if I understand it, is to give full effect to the appeal; that is, while the appeal is pending your order fixing the rate is suspended too?

Mr. PROUTY. Not necessarily; it rests in the discretion of the court to say whether it shall or whether it shall not be suspended. That is a matter which I did not intend to speak about this morning, and which more properly falls within the province of somebody else, probably. But it is here, That the only way shippers can obtain relief ordinarily is by putting in effect the order of the Commission.

Now, if a community comes to the Commission and makes its complaint, and that complaint is heard and the Commission decides that it is well taken and that community is wronged, one of two things must happen. Unless that order goes into effect the community continues to be wronged and it has no redress. If it goes into effect and is wrong, the railroad is wronged and it has no redress. In other words, somebody must suffer. And the question is, if a competent tribunal has heard the case as an arbitrator and decided that question, why the decision of that tribunal ought not to remain effective pending a review of that question in a court. That is the proposition.

Mr. MANN. Would it be competent for the Chicago Board of Trade, for instance, to file a complaint under a provision of this sort, alleging that the freight rates between Chicago and the seaboard are too high, and have the Commission fix freight rates on everything? Can that be done, if it had the power, under one complaint?



Mr. PROUTY. I suppose if all freight rates were involved in one complaint, that the Commission might fix the freight rates on everything as you suggest.

Mr. MANN. Then under this section of the bill making a provision for a cutting of the rates it would be impossible for a railroad company, without permission of the Commission, to make a lower rate until two years had elapsed?

Mr. PROUTY. No; the railroad company is at liberty to reduce the rate at any time.

Mr. MANN. If the Commission can fix a rate and order the railroad company to adopt that for two years, how can the railroad company reduce the rate in the meantime?

Mr. PROUTY. The rate which the Commission fixes is exactly like the rate the Illinois commission fixes or the Iowa commission fixes. It is a maximum rate.

Mr. MANN. Ah, no; but that is exactly what we want to find out. In considering the bills we have had before we have questioned shippers, and they have not talked about a maximum rate; they have talked about fixing a rate in order to prevent the cutting of the rate. What is the idea of the Commission, that you would fix a maximum rate?

Mr. PROUTY. Yes.

Mr. MANN. And that the railroad can make a rate below that?

Mr. PROUTY. Yes; if they will publish the rate.

Mr. COOMBS. That is, it must be uniform?

Mr. PROUTY. Yes; uniform to everybody.

Mr. MANN. Then you do not think you ought to have the power to say what is a reasonable rate and determine that that rate shall be enforced, but simply that you shall have power to say what shall be a reasonable maximum rate?

Mr. PROUTY. When the reasonableness of the rate is called in question, that is the only power the Commission should have. There are certain cases where discrimination is alleged where it might be necessary to determine maximum and minimum rates.

Mr. MANN. Discrimination is alleged everywhere.

Mr. PROUTY. Not that kind of discrimination. The Commission should have power, might have power, or would have power under this bill, to determine the differential between New York and Philadelphia, and that differential must be observed.

Mr. MANN. The only way you could determine that under any bill we have had here is by fixing the rate absolutely. Here are Chicago and Kansas City, for instance. You are not permitted under this bill to say what the differential shall be.

Mr. PROUTY. That is what we say.

Mr. MANN. But I say that you are not permitted under any bill that we have had here to say what the differential shall be, but you must say what the rate shall be.

Mr. PROUTY. As I have said, I have not read that bill. I know generally about a great many bills which the Commission would favor. I have never favored a bill, and I do not think it true of this bill, which does not permit the Commission to fix a differential, because that is the only thing the Commission is called upon to do—

Mr. MANN. I say the only way you can fix the differential is by fixing the rate.

Mr. PROUTY. I understand that we might fix the differential directly, just as we would fix classification, and let the railroads fix the rates. There was a great discussion between New York and Philadelphia and Boston some years ago as to what the differential between those three cities should be. The railroad referred that to a board of arbitration, of which Mr. Thurman was one member, and I think the chairman was a member; and that board of arbitrators fixed the differential between those places. Under this bill, as I understand it, the Commission would act in exactly that way; it would fix the differential and the railroad would fix the rates.

Mr. CORLISS. And the railroad has an immediate relief by applying to the court to prevent enforcements of the order of the Commission under this bill.

Mr. PROUTY. Certainly.

Mr. CORLISS. So it is not an arbitrary adjudication of the Commission for two years without power to immediately appeal to the courts?

Mr. PROUTY. I have never advocated giving to the Commission any power over a rate which could not be reviewed in the Federal court; in the circuit court first, in the circuit court of appeals next, and the Supreme Court of the United States finally. And my position is that if those tribunals all affirm that the rate is unreasonable it ought to be made right.

Mr. MANN. The bill here says that you should have the power to fix the relation of rates.

Mr. PROUTY. That is a differential.

Mr. MANN. That is what you mean by a differential?

Mr. PROUTY. Certainly.

Mr. MANN (reading):

In case of ordering a change in the relation of rates, if it shall become necessary, in order to establish or maintain a just relation thereof, to prescribe the rate or rates to be observed by either or all of the parties concerned therein, it shall be its duty so to do; and when a rate involved in any case is a joint rate it shall further determine the proportions, etc.

You think that would give you the power to say how much more should be charged from Chicago to New York than from Kansas City to New York?

Mr. PROUTY. Yes; it might.

Mr. MANN. How much less?

Mr. PROUTY. It might.

Mr. MANN. "It might;" of course it might. But would it?

Mr. PROUTY. Yes; I think it would. That power has to be exercised by somebody. As I say, it is now exercised by boards of arbitrators selected by the railroads.

Mr. MANN. Then, if the railroad companies concluded that they ought to reduce the rate from Kansas City they would not have the power to do so at all?

Mr. PROUTY. They must reduce the rate from Kansas City and Chicago at the same time, and that is done now; that is done to-day. The rate to-day between New York and Kansas City and Chicago and St. Louis were all made on a certain differential basis. When that rate to one point is reduced, the rate to every other point is correspondingly reduced.

Mr. MANN. Then you think the Commission should be authorized to determine absolutely how much more in every case shall be charged

from Kansas City than from Chicago, or from Minneapolis than from Chicago, or from Ogden than from Chicago?

Mr. PROUTY. I think that some public tribunal, to whom the people can apply as well as the railroads, should determine that question, which is now determined by boards of arbitration selected exclusively by the railroads. In other words, I think the Government should create a board of arbitration instead of the railroads creating that board to determine those questions.

Mr. STEWART. Do you not think the difficulty would be this: That the Commission should take the initiative and relegate the railroads to the courts for revision?

Mr. PROUTY. No, sir; I do not think so. My own view is that the rates should be fixed in all cases by the railroad company.

Mr. STEWART. Are you not begging the question when you say that the rates should be fixed by the railroad company, and that when they make the rebate that should be fixed; are not they always escaping those propositions and making a secret rate?

Mr. PROUTY. The secret rate and the published rate are two different things.

Mr. STEWART. You want them to publish their secret rates?

Mr. PROUTY. We want them to publish any favored rate they give anybody.

Mr. STEWART. Is not that the thing they are avoiding; is not that the vice in the whole proposition? How are you going to force them to publish those preferred rates they give to individuals? That is the vice of the whole proposition.

Mr. PROUTY. They publish between Chicago and Kansas City a rate of 22½ cents on dressed meats. They give to some favored shipper a rate of 18½ cents. Now, then, I would have somebody invested with power to order them to publish a rate of 18½ cents.

Mr. STEWART. That is the proposition they are dodging and will continue to dodge.

Mr. PROUTY. Suppose you publish a rate of 18½ cents, will they reduce that?

Mr. STEWART. In secret, yes.

Mr. PROUTY. They will soon come to a point where they won't do it.

Mr. STEWART. How are you going to force them to that low point?

Mr. PROUTY. They force themselves; they select the rates. If a railroad company publishes a rate of 22 cents and makes a rate of 18 cents to a favored shipper, let them publish the 18-cent rate. If they publish 18 cents as a rate and then make a rate of 15 cents to a favored shipper, let them publish 15 cents as a rate.

Mr. STEWART. Suppose they do not do it.

Mr. PROUTY. How are you going to compel them to, you mean?

Mr. STEWART. Yes; that is the idea.

Mr. PROUTY. If this Commission makes an order to the railroad company that it publish a rate of 15 cents, it can be enforced in two ways.

Mr. STEWART. How are you going to find out that they are giving this secret rate of 15 cents?

Mr. PROUTY. Well, that is the difficult proposition——

Mr. STEWART. That is the proposition we have to meet.

Mr. PROUTY. But you can find it out with sufficient certainty for this purpose, although you might not be able to find it out with sufficient

certainly to convict somebody under a criminal act. The attorney of one of the great railroad systems of the United States said to me the other day: "I have about got around to a point where I want the Commission to make the rates." I said, "Why?" He said, "Because if you did I think they would be better observed by the railroads than when made by the railroads themselves." But while there is considerable to be said on that proposition, while a majority of the States from which this committee come do substantially prescribe railroad rates, I can not believe that in those States the Interstate Commerce Commission ought to be charged with the duty of fixing the rates. Although the carrier is a quasi-public corporation it is a private corporation.

Mr. STEWART. But when we have ascertained by experience that they will not do it fairly then ought there not to be a power that will force them to fairness?

Mr. PROUTY. I have given my opinion on that.

The CHAIRMAN. You were about to give the two remedies.

Mr. PROUTY. The first remedy is to provide a penalty, as you do in Illinois. If the railroad does not observe the order it is subject to a penalty, and that penalty is made large enough so that rather than incur the penalty the railroad will observe the order. The second remedy is by an application to the court allowing the court to enforce the order by a mandatory remedy.

Mr. STEWART. Do you think a railroad company would care a continental for a fine of \$5,000; would that deter them?

Mr. PROUTY. A fine of \$5,000 against a railroad company amounts to nothing; but a fine of \$5,000 imposed against each offense amounts to a good deal.

Mr. ADAMSON. Suppose you also provide that from the day the published rate goes into effect each shipper may for all time recover from the railroad company for the expenses charged over the lowest rate charged for the day he ships?

Mr. PROUTY. Well, Mr. Representative, that remedy has been considered. There are a great many other remedies of that sort. I do not think any of them are entirely fair. I do not think any of them are entirely adequate. I think there is an adequate remedy and a fair remedy, and that that ought to be applied.

Mr. ADAMSON. They might help a little?

Mr. PROUTY. Possible those would help.

Mr. CORLISS. It would be a good thing for the lawyers?

Mr. PROUTY. Yes.

Mr. ADAMSON. If a man thinks enough of a case to pay a lawyer to go after it he can find him if it is meritorious.

Mr. PROUTY. I wanted to say one thing more in reference to the chairman's testimony, and that was this: The statement has been made a great many times that this law is all right enough as it stands; that the Interstate Commerce Commission is to blame for not having enforced this law. Now, it is the privilege of every American citizen when he is accused of a crime or dereliction of duty to be confronted with the specifications of the charge and with the witnesses to prove it, and, as a member of the Interstate Commerce Commission—my associates can say what they want to—if the charge is made here that the Commission has not done its duty in enforcing this law, I hope you will ask of the witnesses in what respect; and I hope you will

allow me to come here and show you what I can in respect to any transaction that may be referred to.

I am not conscious, since I have been on the Interstate Commerce Commerce, in the five years I have been there, that I have ever omitted to do anything in my power to enforce the act to regulate commerce; and you gentlemen can not give this country a better service than to give attention to the powers of the Interstate Commerce Commission in that respect.

This law has been in effect over fifteen years, and it has produced in no material degree the thing which it was intended to produce. If the fault is with the Commission who are administering that law the people ought to know it. The law provides that a Commissioner may be removed for incompetency, and I am inclined to think that we have somebody at the White House now who would enforce that part of the law. If this Commission is incompetent, it should be removed. If the trouble is with this law, if no commission, competent or incompetent, can enforce this law, then the law should be amended; and it is your duty to find out whether the Commission is or is not competent, whether it has or has not neglected to enforce the provisions of this law.

Now, when somebody appears here and says that the Interstate Commerce Commission has not done its duty, he ought to be required in public—not in private—to say in what respect is the shortage of duty, and then allow us to meet that claim.

Now, I have already taken up so much time in answering these questions that I do not know that I ought to undertake to say what I intended to this morning. There are certain questions of evils which this bill seeks to remedy. One evil is the payment of the rebate, the departure from the published rates. Another evil is discrimination in the published rates. There are to-day the grossest discriminations in the published rates in favor of the Standard Oil Company. Another evil is of too high a rate. My own belief is, and has been, that the great danger is a rate absolutely too high. I do not want to belittle the evil of discrimination; it is the sore spot, it is the thing which hurts to-day, but it is temporary in its effects and the other thing is permanent in its effect, and if you will indulge me for fifteen minutes I want to present, rather than discuss the details of this bill, my idea on that subject.

In order to do that, I want you gentlemen to consider for half a minute what railroad competition is. You are told that we ought to rely on railroad competition to regulate the rates of this country or to secure a sufficiently low rate. What is railroad competition under the act to regulate commerce?

I will take two points that you gentlemen are all familiar with. Mr. Mann seems to be very much interested in this subject, and so we will take Chicago as one point and Omaha as another point. We will say there are three (as a matter of fact, I think there are four lines now) railroads competing for business from Omaha to Chicago. The act regulating commerce provides that the rate, those companies charge shall be a published rate open to all shippers alike. These three railroads all have business. How do they compete for it? One railroad may offer a better facility than another railroad, but the practical way, the only way in actual railroad competition, is to offer to one shipper a lower rate than is offered by his competitor. Suppose the railroad

competes under the law—not secretly and in violation of the law, as they do to-day, but competes openly—it observes this law, and puts in effect a published rate by one of those lines between Chicago and Omaha. What happens? Every other line has to meet that; the published rate must be the same between all three lines. And what effect does that produce on these three railroad companies? Have you increased the business? Very little, if at all.

I do not mean to say that a special rate may not build up some industry. I do not mean to say that railroad rates may not contribute to the general prosperity and in this way add to the traffic of the railroads; but the mere reduction of a rate between Chicago and Omaha does not materially increase the traffic over those lines. It does not make practically any difference with the quantity of corn raised west of the Missouri River whether the rate from the Missouri River to Chicago is 12 cents or 18 cents a hundred. So the only effect is this: You have reduced the revenue to every single line, you have injured every single line, and you have not benefited the lines.

Mr. ADAMSON. You do not think rate wars are beneficial to business?

Mr. PROUTY. No; I do not think rate wars are beneficial to business. Rate wars sometimes reduce rates—

Mr. ADAMSON. I want to ask you, then, if one line makes a low rate, legally publishing it, and forcing other rates down, and other railroads then meeting that cut, and then the first railroad publishing a lower rate and the other roads meeting that, thus inaugurating a rate war, would it not be necessary and right that the Commission should be invested with power to make a minimum rate; in other words, is it not right to do something to protect the railroad in such cases as well as the people in other cases?

Mr. PROUTY. That question came before the Commission early in its history, and Judge Coolidge said that the Commission had not such power.

Mr. ADAMSON. Ought it to have it, in order to meet such emergencies as that?

Mr. PROUTY. That is for you gentlemen; I do not think there are, or will not be in a short time, any emergencies of that sort. No; I do not think it is necessary for the Commission to have that power, but I do think it would be just to the railroads to give somebody that power. I think you ought to aim to protect and conserve the interests of the public. They are a great part of the public, and you can not have general prosperity without they are prosperous, and their interests should be considered by you.

Mr. ADAMSON. If we are going to take charge of the subject and do such regulation as the balance of the public want, ought we not to legislate in the interests of the railroads to prevent their destruction?

Mr. PROUTY. Perhaps so. I would not dissent from that.

This thing that you call railroad competition hurts every railroad and does no railroad any good. That is a proposition which you gentlemen must consider as the basis of all these investigations. It is not like competition in some other business. Your railroad is there and it has got to be used there; it has a certain business and that business must be done there and can not be done anywhere else. If you own a factory that does not pay, you can move it somewhere else, possibly; if you do not like one market, you can go into another market; but that is not so with the railroads.

It must be used there, to do that business there, and it soon becomes evident to every man who investigates this question at all that railroad competition, while it may add immediately to the traffic of a business, is suicidal in the end. Every railroad manager sees it. The first thing he tries to do is to make a traffic agreement—to agree on what these rates shall be. That does not amount to much, because it will not be observed. Then comes the following arrangement: He says that there is so much traffic; he says, "We will divide it between these three railroads." Then Congress passes a law and says, "You shall not pool." Then comes the traffic association. They say, "We will agree on some rate." And then comes the antitrust law and says, "You shall not maintain your traffic association."

Then, gentlemen, this thing finally gets back to the owners of this property, and they say, "We are paying for this nonsense. We, the owners of these three roads, are the sufferers," and the thing which can not be controlled through the traffic department, and never is, is controlled through the medium of ownership.

In some way or other those three roads are bound to get together. The owners of those three roads are bound to get together to eliminate that competition, which does not do anybody any good and which does everybody—from a railroad standpoint—harm.

Now, I said when the joint-traffic decision was made that that decision did more to eliminate railroad competition in the United States than any other thing which had happened for years. I believed it would. I said five years ago, when I first investigated this question, that there was but one possible outcome, and that was the consolidation of the railroads of the United States. My opinion would not be worth anything, and it was not worth anything then, but conditions to-day have verified that judgment.

You, gentlemen, have seen from the newspapers from time to time the extent to which these consolidations have proceeded. I doubt if you realize it fully, and I want to call your attention to it as an important phase of this problem, and one which has to be reckoned with in disposing of this subject.

I have in my hand here an article written by a gentleman named Kuneth. I do not know him, but I have taken this from the *World's Work* for February, 1902. I say I do not know him, and I attach no particular importance to his opinion, but I use these tables merely for the sake of reference. What do these show? Here we have, first, the Vanderbilt system, which embraces 19,500 miles of railroad. I do not take Mr. Kuneth's opinion for that; that fact is shown by the records of the Interstate Commerce Commission—with this exception: The Northwestern Railroad is reckoned as a part of that system, and while everybody understands that the Northwestern Railroad is a part of the Vanderbilt system, the records of our office would not demonstrate that fact. But you can safely say to-day that the Vanderbilt system embraces 19,500 miles.

Next we have the Pennsylvania system. That system is set down here as embracing 14,350 miles; but that computation includes the Baltimore and Ohio Railroad. The Chesapeake and Ohio Railroad and the Norfolk and Western Railroad are treated as controlled jointly by the New York Central and the Pennsylvania. I think, in fact, they are controlled by the Pennsylvania Railroad and should be added to

the Pennsylvania system; making that system 18,000 miles, in round numbers.

We know that from the records of the Interstate Commerce Commission.

We have next here the Morgan-Hill system, which embraces roads in which Mr. Morgan is most prominently interested and which he controls, and they aggregate here 37,500 miles.

Now, with respect to that, we know from the sworn testimony before the Commission that Mr. Morgan and Mr. Hill control the 18,000 miles of road embraced in the Northwestern merger. It is known and assumed by everybody that Morgan controls the Southern Railroad.

Since this article was written I have added 6,000 miles to the mile age given here, because Mr. Morgan to-day controls the Louisville and Nashville. It is somewhat remarkable how these things happen up in New York. There is a flurry in the stock market and something has been done, and nobody knows exactly what. Somebody says Mr. Gates has it, and another man says Mr. Rock Island Road has it; but in two or three days Mr. Morgan says, in reply to an inquiry, "I own it."

Mr. Gates says, "I thought I did, but I didn't," and Mr. Belmont says, "I did, but I don't. Mr. Morgan owns the Louisville and Nashville."

Add that to this statement here and you have 43,000 miles of road which Mr. Morgan controls to-day. I think I can say in respect to that, taking this transaction in Louisville and Nashville, that the testimony given before the Commission, and from the records of the Commission, that that statement is correct.

We have here now the Gould system, of which the Missouri Pacific is the nucleus, and about which I do not pretend to know so much, and I do not know whether the records of the Commission would show it or not. I have to take that system alone, as Mr. Kunitz gives it, at 16,000 miles.

The chairman suggests that when the reports for this year are in they will probably show that fact. That leaves the Harriman system, which is set down here at 21,000 miles; and in respect to that I will say we know that from sworn testimony given by Mr. Harriman before our Commission.

Now, gentlemen, what is the grand total? One hundred and fourteen thousand miles of railroad controlled by five different systems, or five different persons. You have left the Acheson system, the Rock Island system, the San Francisco, and the Milwaukee, and those are the only important independent systems there are. Those aggregate 21,000 miles. When you have added, gentlemen, to the 114,000 miles that I have stated the 21,000 miles now independent you have a monopoly of the railroads of this country in the hands of five men. You say there are 200,000 miles of railroad. That is right; there are 200,000 miles of railroad. There are 70,000 miles of railroad left. But what railroad? Seventy thousand miles of railroad that does not begin anywhere and does not go anywhere; 70,000 miles of railroad that is absolutely dependent for its existence upon these five great systems.

Now, gentlemen, you may talk about railroad competition, you may rely upon railroad competition to reduce rates or to regulate rates, but there is no railroad competition. When five men seated around a



table in the city of New York can say what the rate on grain shall be from Kansas City to the Gulf and from Kansas City to the seaboard, from the Missouri River to the seaboard, and from the grain fields to Chicago and Duluth, you have not any more competition in the movement of grain. When five men can sit down around a table in the city of New York and say the rates shall be so and so, "if at the end of the year this thing does not pan out to be as we think it ought to we will make it right," you have a pooling arrangement that can never be reached by any law. One of two things has got to result. Either these five men will agree upon some *modus vivendi*, upon some apportionment of the territory of this country, as they have done in England to-day, with the result that they have the highest freight rate there in the world, or they will become partners, or one man will buy out the other four.

Now, gentlemen, when you have a condition in this country where one man virtually controls its railroads, what are you going to say about it? We asked Mr. Harriman that question, and we asked Mr. Hill that question, and Mr. Harriman and Mr. Hill both said: "You need not be at all alarmed; we will take care of the public; we will reduce freight rates." Gentlemen, I want to read to you, for I drew it up, a statement showing the appreciation of the properties embraced in the Northwestern Securities Merger for five years. I compare March in 1897 with March in 1902, and with this result:

Northern Pacific common, in 1897, was worth 12. To-day it is worth a trifle above par. A gain on \$80,000,000 of \$72,000,000.

Northern Pacific preferred was worth 35. It is worth par to-day. A gain on \$75,000,000 of \$50,000,000.

Burlington was worth 72. It has been retired on the basis of 200. Converted into bonds on that basis. A gain of \$128,000,000.

The capital stock of the Great Northern was then \$40,000,000, and it sold on the market for 120. The capital stock to-day is \$100,000,000, and it sells on the market for 180. A gain of \$132,000,000.

This makes in all a net gain on the market value of those stocks of \$382,000,000 in five years. Money enough to build and equip two lines of railroads from the head of Lake Superior to the Pacific coast.

What is a freight rate? A freight rate is a tax on everything which enters into the life and commerce of this country. You have not got a stitch of clothes on you which has not borne that tax. You do not eat a single thing which does not bear that tax, unless you dig it in your own garden or buy it from some laborer who digs it in his garden. And to say that one man shall determine what every other species of property shall pay to his property is a thing which I do not believe the people of the United States will submit to. Mr. Hill says in his sworn testimony that a man who charges too high a rate is a pirate. I do not think that. The question of the rate, a reasonable rate, is a matter of opinion. Mr. Hill's opinion might be one way and your opinion might be the other way.

So I do not think that, at all. But I do think this: The history of all time has shown that when you give a single individual power over the property or the liberty of his fellow-man and do not restrain or control that power, he abuses it. If the railroad property of this company has the right, without control, to say what tribute other property shall pay to it, it will abuse that power.

Now, you say that is a theory. You say your rates are still falling.

These operations began, you see, years ago. I say to you that rates are not still falling; I say to you that rates are advancing—that there is a steady advance of rates in all parts of this country to-day. This is shown by the published schedules on file with the Interstate Commerce Commission. It is shown even by the rates per ton per mile, which is a poor indication of the actual rate, but which has advanced for the last two years, and undoubtedly, when our computations are completed, they will show a higher rate per ton per mile for the year ending June 30, 1901, than for the previous year.

If you could sit in an office, as I do, receiving complaints from all parts of the country of advances here and advances there, you would understand in a way that you can not understand how this process goes on.

If one man owned all the railroads of this country he could not charge what rate he wanted to; he would not be fool enough to make any sudden or marked advance. What he would do would be to maintain rates. What does that mean? To just maintain the present published rate? Mr. Morton, of the Atchison Railroad, in testifying before the Commission some time ago, said that departures from the published rates cost his railroad between \$500,000 and \$1,000,000 a year. His revenues are about one-fortieth of the entire revenues of the railroads of the United States. Now, assume that every other railroad exceeds the rate to the same extent that the Atchison Railroad does, neither more nor less. What does it mean? It means this: That a simple maintenance of the published rates adds to the net revenues of the railroads of this country \$20,000,000 a year. On a 4 per cent basis it adds to the capitalization of this country \$500,000,000; it puts into the pockets of somebody \$500,000,000—the owners of these stocks and securities.

There is another thing. I am sorry I have not time to elaborate more, and I know it is rather uninteresting testimony, but it is important that you gentlemen should have these things in mind, because they go to the basis of this whole question.

The cost of transporting traffic is decreasing every day. Grades are reduced, curves are cut out, the power of locomotives is increased, and the result is to reduce the cost of transportation. The sworn testimony of the manager of the Lake Shore Railroad before the Interstate Commerce Commission not long ago showed the average carload of grain from Chicago to New York was 60,000 pounds. Fifteen years ago that was probably 30,000. He said that the carload of the future would be nearer 100,000. He further said that one engine would draw 50 cars from Chicago to Buffalo, and doubtless the same engine would draw the same number of cars from Buffalo to New York.

Now, observe for a minute what that means. In 1885 the average carload was 30,000 pounds, and the cost at the present rate from Chicago 17½ cents. The railroad would receive for hauling that train load \$2,625. To-day the average carload is 60,000 pounds, and the railroad would receive for hauling it, gross, \$5,250. When the average load is 100,000 pounds the railroad will receive for hauling those 50 cars \$8,725. Captain Granner testified that on his line 50 cents a train mile would probably cover the cost of movement. Taking out the cost of movement, \$2,100 in 1885; \$4,700 in 1900; \$8,200 in 1901.

There is another thing. The traffic on these railroads is increasing, and as you increase the density of traffic you can move it cheaper; the

rate ought to decline. These gentlemen say that the cost of their supplies is increasing, and perhaps they are; but statistics just published by Bradstreet show that for the year ending December 31, 1901, the gross revenues of the railroads increased 12 per cent and the net revenues increased 16 per cent.

Now, why is it? When the cost of moving traffic is increasing, when the density of traffic is increasing, when gross revenues are increasing, and net revenues increasing still more rapidly, why is it that the freight rate also is increasing? It is because you are removing railroad competition.

Now, they say that there is no such thing as railroad competition. At the risk of wearying you I will cite one instance, because it arises in the sworn testimony taken by this Commission.

The rate from the Missouri River to New York on grain used to be 29 cents a hundred pounds. I think it was about that in 1892. In 1899 that rate had fallen to 12 cents a hundred pounds. The Commission had investigated that question and had declared that 23 cents was a reasonable rate. We thought we would investigate it again and find out what it was that occasioned this low rate from the Missouri River to the seaboard.

We summoned before us all the traffic managers of the leading railroads, and they all testified, without one single exception (this was in the winter and there was no water competition), that the cause of that low rate was railroad competition between the carriers themselves. What is the rate to-day from the Missouri River to New York? I think it is 18½ cents; and why is it 18½ cents to-day as against 12 cents three years ago? For this reason: You have eliminated the most troublesome factors in that competition situation. The Baltimore and Ohio and the Norfolk and Western and the Chesapeake and Ohio are to-day controlled by the Pennsylvania. The lines north of Pennsylvania are controlled by not over two men. That is the reason that the farmer west of the Missouri River pays to-day 5 cents a hundred pounds more—yes, 6 cents a hundred pounds more—than he did three years ago for the transportation of his grain.

I do not say, gentlemen, that the rate is too high now. I am not discussing that question at all; but I am only saying to you that this competition which has been relied upon in the past is a thing of the past and that you have to put something else in the place of it. Now, what are you going to do? What is the remedy? The obvious answer is, Compel competition by law. That is what Governor Van Sant says. Dissolve the Northern Securities Company. That is what the Attorney-General says. Enforce the law against trusts and monopolies.

Now, the law ought to be enforced. But suppose you dissolve the Northern Securities Company, what have you gained? Those railroads are still owned by the same men, they are still friendly, you can not by any possibility compel them to be enemies and to compete as enemies. Take all these other mergers. Mr. Morgan has bought this stock in the open market. Can you deprive him of it? And suppose you could. Suppose you could break up every railroad combination that has been formed in the past five years in the United States or in the last ten years. Suppose you could destroy the New York Central system and the Pennsylvania system and the Harriman system and the Gould system.

Suppose you could enforce the antitrust law and prevent all com-

bination between railroads and all agreeing as between railroads. What then? My friends, you would have in this country, in my judgment, a state of chaos, a universal bankruptcy in the railroad world. You can not apply that remedy, and you do not want to apply that remedy.

Now, there is a remedy which you can apply. There is a remedy which is perfectly just to everybody, and that is the remedy which we ought to apply. If you ask me what the remedy is for the steel trust, I will say I do not know. I do not know. I am told that trust charges to-day \$14 more for rails than a ton of steel rails cost. Now, I do not know how we are going to prevent it. But if you ask me what the remedy is for railroad monopoly, I have no difficulty, and you have no difficulty, in answering that question. The courts in every State of the Union have decided, the Supreme Court of the United States has decided, that the railroad is a public servant, that its rate is subject to public supervision, and the only way in which you can correct these evils is to exercise in some form, in some proper form, some supervision over the railroad rate.

In closing what I have to say I will take a particular case. In 1900 the railroads operating in official classification territory advanced the rate on hay from sixth class to fifth class. They tried to do it for ten years, but had been unable to do so. Certain shippers of hay brought a complaint before the Interstate Commerce Commission complaining that that advance was unreasonable and asked an investigation, and we have been investigating at great length that question.

It was said in the argument, and perhaps appears in the brief, that the average advance on all hay shipped in official classification territory would be about 2 cents a hundred pounds only, a thing so insignificant, said the attorneys for the railroads, that no shipper who pays it could realize it. This classification does not apply to all the hay shipped in the United States.

It applies, however, to perhaps one-half, perhaps two-thirds of it. But suppose for one minute it applied to all the hay shipped in the United States. What does it mean? We raised last year 50,000,000 tons of hay in the United States. Of that 50,000,000 tons, we shipped by rail 7,000,000 tons. This is an advance of 40 cents on every ton, or of nearly \$3,000,000 on all the hay shipped in this country—\$3,000,000 taken out of the pockets of somebody and put into the pockets of the owners of our railroad properties.

Now, gentlemen, if that is right, it ought to be done, and I want to say to you that I do not know, although I have heard all this testimony, whether I think it is right or wrong; yet I do not want to be understood as expressing any opinion about it, for I have not done it. I say, If it is right, it ought to be done; if it is wrong, there ought to be some way in which the people of this country who are interested in that matter can obtain relief.

Now, there is no way in which they can obtain relief unless you provide some tribunal which has power to inquire into the reasonableness of that rate and, if it finds the rate unreasonable, to make it right. That is the sum total of my proposition.

I do not care to discuss to-day the ways or the means of doing it. It is said, Let him bring a suit. Mr. Hill said in his testimony before the Commission, "Let him bring suit." Who is going to bring suit? Somebody who is damaged to the extent of \$25—and no one person may

be damaged more? Mr. Harriman said in his testimony, "Let him bring a suit." I said "Please cite the Commission one instance in which a court has ever rendered final judgment granting relief in a case like that." He said, "I am not a lawyer." I said, "You have money enough to hire a lawyer; get the best counsel you can, try and furnish this Commission with a memorandum showing one single case in which it has ever happened that a court of final resort has given damages for a thing of that sort." He has never furnished that memorandum, and my belief is that no such case can be found.

While the unreasonable rates and the unreasonable exactions of railroad companies have elected legislatures, abolished courts, and led to the most violent political convulsions, no ease, no relief, has ever been obtained from the courts.

And that is the reason why the States have exercised that power. The members of this committee come from 16 different States. Of those 16 States, 10 either make or supervise the rates. I include in that the State of Michigan. The State of Michigan has never made or supervised the freight rates. It has made the passenger rates, and its commissioner has some power over the passenger rates. But in the other 9 States they make the rates direct. Illinois does, Iowa does, Missouri does, Alabama does. As I have said to you, I do not advocate that; I think the railroad companies should make their rates first. But when those rates have been made, in some way or other they must be supervised.

Now, a rate is profit. You have to deal with that rate in the most delicate manner. You have to be extremely careful that you do not do any injustice to the railroads. You can not protect the public unless in some way or other you do it.

Now, there is just one other observation, and that is that you must not only do it, but you must do it now. Said a Senator of the United States to me the other day, "We can control these rates." "Yes," said I. Said the Senator, "We can control them whenever we see fit." "No, Senator," said I, "you can not." The Supreme Court of the United States has declared in the most positive terms that the legislature may either directly or through a commission control the rates, with this limitation, that it must allow to the railway company a reasonable compensation for the service performed, and unless it does that the rate established is an illegal rate.

Take the Northern Securities Company once more. Saying nothing about the appreciation of values, Mr. Hill has added to the capitalization of those companies \$150,000,000, and that stock has gone onto the market. If I am called upon to fix a rate over those roads I must take that into account. You have bought that stock and you have paid \$100 a share for it. It would be in my opinion, illegal and, whether it is illegal or not, it would be an act of the rankest injustice if I fix a rate on that system which deprived you, an innocent purchaser, of your property.

You have got to deal with this question finally, and you ought to deal with this question immediately.

Now, I will not undertake any further than I have in answer to your questions to discuss the details of this bill or the method of getting at this thing. I would be glad to answer any further questions that I can in reference to matters about which I have testified, and I certainly want to renew the assurance which I gave before that I have

myself no feeling that the Commission has not been treated with proper respect. A man who has served for five years on the Interstate Commerce Commission gets that idea pretty thoroughly knocked out of him, if he does not entirely. And I wish to assure the chairman and the members of the committee that I have no such feeling and did not intend to convey any such feeling.

Mr. ADAMSON. You think the Corliss bill meets your view and would be satisfactory?

Mr. PROUTY. No; the Corliss bill does not meet my views. I do not think it is the best way to deal with it; but perhaps it is the best way and only way we can deal with it now. I think the only proper way and only possible way to deal with it is to create a special court which shall revise and enforce the orders of some commission. The Interstate Commerce Commission to-day is a political body in a sense; it is a partisan body in a sense. I do not think its orders ought to be put into effect unless the railroad company has some protection in the way of review, and looking at this thing practically you have to create a court which becomes an expert court. They have been through this thing in England. In 1850, or somewhere along there, it was proposed to devise some scheme for the regulation of their railways, and the House of Commons inquired of the superior judges at that time whether, in their judgment, the courts were competent to undertake that work. As I remember, Lord Campbell was lord chancellor, and he stated that of his associates but one, thought the court, was competent to do that work. Nevertheless, Parliament did delegate that power to the court, and from that time to 1875 it was discharged by the court.

Mr. ADAMSON. Have you not in mind any constitutional scheme by which you could utilize any existing court to give prompt effect to this?

Mr. PROUTY. It does not make any difference how you create that court; you may do it by creating a court from judges already on the bench.

Mr. STEWART. You said the court acted in that way in England until 1875?

Mr. PROUTY. They pursued that course until 1875 in England; then they created a railroad commission. It is made up of two persons who are supposed to be experts. One is a business man and one is a railroad man. There is also delegated to serve on that commission one judge of the higher courts, and the three constitute the commission. The findings of fact of that commission are conclusive; they can not be reviewed in the courts or anywhere else; but the findings of law can be reviewed by appeal in the higher courts. That is the commission to-day which England employs.

Mr. STEWART. You said also that the rates in England are higher than in any other country of the civilized world.

Mr. PROUTY. They are, I think. In England the commission does not make maximum rates; it declares some through rates, but the maximum rates are made by direct act of Parliament. The board of trade, which corresponds somewhat to the Interstate Commerce Commission here, considers this question and reports to Parliament a schedule of rates for a particular railroad which are deemed to be fair and just, and Parliament enacts them into a law, and those rates are the maximum rates which the railroads can charge.

Mr. STEWART. Then the English railroads commission has only jurisdiction over secret rates or rebates?

Mr. PROUTY. The English law is the foundation of our law. It provides that there shall be no discrimination between shippers and no discrimination between places, and it also provides that where railroads refuse or neglect to make proper through rates the commission shall have power to deal with that question. Those are the questions, as I understand it, which are principally dealt with by the English commission.

The CHAIRMAN. I would like to ask you in regard to a matter which you have only incidentally referred to. I wish you would give us your views with reference to the matter of classifications. There are, I think, three classifications now?

Mr. PROUTY. Three principal classifications.

The CHAIRMAN. What objection is there to a uniform classification throughout the entire territory of the United States?

Mr. PROUTY. To my mind there is no objection.

The CHAIRMAN. What is the objection that is urged?

Mr. PROUTY. The objection urged by the railroads is that conditions differ in different parts of the United States and that a fair classification in California might not be a fair classification in Vermont. That is what the objection comes to. But in answer to that you may say that the Western classification obtains in California, and the Western classification also obtains from Chicago west to the Mississippi River.

This matter of classification has been pretty well gone into and pretty well thrashed out several times. The railroads came very near agreeing once on a uniform classification, and while I do not know it from personal knowledge, it is said that such a classification would have been adopted but for the persistent objection of one single line of railroad. Of course if one railroad stood out it naturally overturned the scheme.

The CHAIRMAN. Would it be wise to invest the Commission, in your judgment, with power over classification?

Mr. PROUTY. The Commission must necessarily have a certain power over classification if it has the power over the rate, because the rate can be advanced or diminished by simple changes in classification. On the 1st day of January, 1900, the railroads in official classification territory advanced the rates on 800 and some different articles by a simple change in classification.

The CHAIRMAN. As this bill is interpreted by certain gentlemen who have discussed the subject here, the rate that would be authorized under the provisions of this bill to be established by a commission would at once become operative without any power on the part of the courts, except where it was manifestly unjust, to interrupt it or to suspend it during further legal procedure. What is your view in regard to that matter?

Mr. PROUTY. Well, Mr. Chairman, I am inclined to think that the language incorporated in this bill was originally sent to Congress by the Commission, and that it was originally suggested by me; but I am bound to say that a consideration of the subject before and since has convinced me that the only workable thing to do is to permit the court, in its discretion, to suspend or enforce the order of the Commission. I think that in a great majority of the cases, if any reasonable

expedition could be secured in dealing with the orders of the Commission, they ought perhaps not to go into effect until they had been passed upon by the court.

The CHAIRMAN. Suppose, in lieu of that provision which makes them at once operative, there was a provision in the law requiring the utmost practical expedition in the disposal of the cases.

Mr. PROUTY. There is that provision now, and I have known something about the operation of the provision, and it has taken on an average four years to obtain a final decision in one of our cases. These cases of ours, while they are law questions, are properly traffic questions. The courts do not like to bother with them. They will not deal with them unless they are obliged to, and every sort of obstacle seems to be interposed to prevent a speedy hearing of the cases. I think if you could create a special court which dealt with these questions alone, which was chargeable in the public mind with the proper disposition of these questions, and which would speedily become an expert body, you would solve that difficulty, and I think you would meet the objection urged by the railroads, which I am perfectly frank to confess is to my mind of great force—that the orders of a body partly political and to an extent partisan ought not to go into effect, under any circumstances, until there has been an opportunity offered for their review.

The CHAIRMAN. Suppose you had a tribunal, say, detailed—made by the Supreme Court—of one member from each circuit in the United States, to serve as this tribunal; what portion of its time would probably be occupied in the disposition of transportation business?

Mr. PROUTY. I think that a court of that kind would be invested in addition with some duties besides simply enforcing the orders of the Commission. In enforcing those orders it ought to have charge of injunctions like those that are pending in the West, and I think it should have charge of Federal receiverships of railroads. I should imagine that finally the greater part of the time of such a court would be occupied in hearing and disposing of these cases. But that might not be true. It would depend on how many appeals were taken by the railroads and how many complaints were made.

There is one thing more I want to say. It is said that there is no complaint to-day of too high a rate. I had that looked up the other day, and in the last three years there had been filed with the Interstate Commerce Commission 807 complaints against advances in rates or against rates which are alleged to be too high. Although the Commission has no power to grant any relief there are pending before it now for investigation that number of cases. All it can do is to investigate and recommend.

There are pending before it for investigation cases which involve to the shippers and the railroads millions of dollars annually.

Mr. MANN. You have the power to declare that the rate is unreasonably high?

Mr. PROUTY. What good does that do?

Mr. MANN. You have the power. How many times have you exercised it in reference to these 800 complaints?

Mr. PROUTY. Those 800 complaints have not been brought before us in a way that that question could be raised.

Mr. MANN. How could it be raised if not in that way?

Mr. PROUTY. The 800 complaints have been informal complaints.



They have asked the Interstate Commerce Commission what could be done, and the reply has been that the Commission can investigate, and would be glad to investigate, at the expense of the Government, any questions of that sort that the complainants desired, and would make what order it could; but that there is no way at the present time in which that order can be enforced. The almost invariable reply is—and I have received in the last few days and have now on my desk some of those letters—that unless we can do something for them and are certain of it that they do not want the railroad to know that they have complained.

Mr. MANN. You say that you have notified them that you can not enforce that order?

Mr. PROUTY. We do.

Mr. MANN. Can not you enforce an order that a rate is unreasonably high?

Mr. PROUTY. I do not understand we can. We have never been able to do so.

Mr. MANN. The law does not provide any method by which you can put in force an order saying that a rate is unreasonably high?

Mr. PROUTY. I do not so understand it. We are at the present time attempting to enforce in one or two cases that kind of an order.

Mr. MANN. You have attempted to enforce it in cases where the Supreme Court held that you went beyond your jurisdiction?

Mr. PROUTY. The Supreme Court held that we had no power to determine what rate should be charged for the future.

Mr. MANN. But it said you could say a rate was unreasonable.

Mr. PROUTY. No; you are mistaken.

Mr. MANN. That is my interpretation.

Mr. PROUTY. No; you are mistaken; you must be misinformed.

Mr. MANN. I have read it.

Mr. PROUTY. You do not read it right, then.

Mr. MANN. That may be.

Mr. PROUTY. Only the other day in an article before the Interstate Commerce Commission as good a lawyer as Mr. Machen, of Cincinnati, took the ground, not that the Supreme Court had not decided it, but that the Commission had no such power. We have decided in one or two cases we would exercise that power and find it out.

Mr. MANN. You say the Supreme Court has never decided that under the law you can declare that the rate is unreasonably high?

Mr. PROUTY. It had decided this: That a man can bring a complaint before the Commission, alleging that he has been charged an unreasonable rate, and that the Commission may award him damages. In determining whether or not he is entitled to damages we must decide whether or not the rate is unreasonably high, and of course I think they have said—although that is denied—that we have that power; but they have declared that we have no power to pass upon a rate for the future—as to its reasonableness, one way or the other. We can declare its reasonableness to-day; we can not declare whether it is a reasonable rate to-morrow.

Mr. MANN. That is another proposition. Then they have to make a change. But I understand you to say that the court has not decided that you can declare a rate unreasonable?

Mr. PROUTY. In the way I have indicated.

Mr. MANN. As I have read the law it plainly gives you the power

to declare a rate unreasonable, and criticism has been made upon the Commission that it does not attempt to exercise that power.

Mr. PROUTY. What we have advised complainants is this, although we do not really think it is so: That we had the power to investigate their case and make a report stating, in our opinion, whether or not the rate was reasonable, and if found unreasonable stating what rate ought to be charged for the future. We had power to order the carrier to cease and desist from the present rate. Now, we have advised complainants that we could do that, and I want to say that in every case—

Mr. MANN. On what ground; on the ground that it is unreasonable?

Mr. PROUTY. Yes, sir.

Mr. MANN. You just declared that you did not have that power.

Mr. PROUTY. No; I declared that the Supreme Court had never said we had it.

Mr. MANN. And you declared that the law did not confer it upon you.

Mr. PROUTY. No; I did not intend to say that. I was speaking of the Supreme Court. The Commission has held that power, because there is no other way in which the case can be settled. But if that is decided in favor of the Commission it amounts to nothing.

Mr. STEWART. Have you awarded damages?

Mr. PROUTY. Yes; we have awarded damages. We sent out a couple of opinions to-day in which we awarded damages for failure to furnish cars, but the entire amount of damages awarded since the Commission has become a Commission is utterly insignificant. I do not remember how much it is.

Mr. MANN. That is just it. Why, if the railroad rates have been so unreasonably high, have not the awards been high? There has been a chance to act under the law.

Mr. PROUTY. Because the complainant does not usually care much about his damages in the past. He very often makes no claim for damages in the past, and because in a great many instances where we hold the rate too high we do not feel we ought to go back and compel a railroad to refund. Take a case that came up from Iowa, in which I wrote the opinion. The complaint was as to the charge on grain from the vicinity of Sioux City. The rate was about 19 cents to 20 cents a hundred.

The carriers that carried that had been carrying grain last year from Kansas City for 7 cents; the carriers who have carried that grain have carried grain from Buffalo to New York for 5 cents. They have been carrying grain from Chicago to New York for 11 cents. We held that this Iowa rate was too high, and that it ought to be reduced from 1 to 3 cents a hundred pounds. It never has been reduced. In fact in that case there was a claim for reparation, but we said we can hardly award reparation in this case. These carriers we think have acted in good faith. While we think the rates ought to be otherwise for the future—there have been pretty hard times in the past, and there are pretty good times now—we do not hardly feel we ought to award damages for the past. I do not think the Commission should have any power to award damages.

Mr. MANN. And having that power you have not chosen to exercise it?

Mr. PROUTY. We have passed on every question of that kind where the complainant has asked for damages.

Take another case. Take the case of the city of Danville, which is 66 miles south of Lynchburg. The Southern Railroad serves both those places. Danville claims it is discriminated against. We held that there was discrimination, and that the rates from Danville ought to be reduced; but what damages could we allow? You can not award damages to the city of Danville, in that instance; that does not amount to anything. They say their industries have been driven away. The complaints we deal with are not from individuals; they are from localities. They are from State railroad commissions sometimes, and sometimes from boards of trade. This complaint in Iowa was by the Northwestern Grain Shippers' Association.

Mr. MANN. It seems evident, then, that where the law gives authority to the individual shipper to discriminate against or pay too high a rate to come before you that they do not choose to avail themselves of that opportunity at all.

Mr. PROUTY. Not ordinarily, Mr. Mann. They ordinarily say this, that unless we can get some speedy and immediate relief do not say anything to the railroad about it.

Mr. MANN. They could get speedy and immediate relief individually, so far as you are concerned, in the way of damages?

Mr. PROUTY. Damages do not amount to anything.

Mr. MANN. You sue a street-railway company for charging 10 cents fare, and if the court holds they have to refund the 5 cents it will stop it.

Mr. PROUTY. If you are a philanthropist enough to carry it to the Supreme Court for the benefit of your fellow-men, all right.

Mr. MANN. We are philanthropists enough to provide a Commission to carry it there; that is the point.

Mr. PROUTY. Then provide the Commission with some authority to do it. I want to say this, that this Commission has said uniformly to complainants within the last three years, I think, if you want your complaints investigated and steps taken that can be taken to give relief it shall be done, and all we ask you to do is to sign a complaint. That has been the rule of the Commission.

I am sorry, gentlemen, that I have been obliged to weary you with such lengthy remarks.

The CHAIRMAN. You have not wearied us and we have been very glad indeed to hear you.

(Adjourned.)

AFTERNOON SESSION, *April 22, 1902.*

**STATEMENT OF HON. JOSEPH W. FIFER, A COMMISSIONER OF  
THE UNITED STATES INTERSTATE COMMERCE COMMISSION.**

Mr. FIFER. Mr. Chairman and gentlemen of the committee, the very full and complete discussion of this question made by my colleagues makes it unnecessary for me to detain the committee very long. Now, we have heard from Judge Prouty in regard to the great combinations that have taken place in this country in railroads and the combinations that are now going on. I think all men of reflection will agree that that practically obliterates railroad competition on which

the people could rely in the past for a reasonable rate and that another remedy must be pursued, and that is the remedy of control.

Gentlemen, railroads are not engaged in business for their health. They have money invested in those properties in order to make a profit, and the fruitage of railroading is the price that they get for the carriage of persons and property. When that is understood you can very well understand the further fact why it is that railroads refuse to yield the smallest fraction of their right to fix the rate and to control it, as far as they may, after it is fixed.

Now, it is easy enough to say that the railroads must be controlled. It is quite a different question to say how they shall be controlled. When you touch the right of railroads to fix their rates or to control their rates, you touch the tenderest nerve in their whole anatomy. They will yield that right very reluctantly.

The question is for this committee and for Congress to say whether there shall be control. If railroads are to fix their rates in the first instance and then make changes at their pleasure—if that is the decision of the committee and of Congress—that is the end of the controversy. But if you say there shall be control, then who shall do the controlling? Who are you going to make the depository of the power to control railroads? It must be done by some human agency. Who shall be that agency and how shall it be done? is the question, it seems to me, for the decision of the committee; and when you approach that question you have your knife on the nerve of the whole situation, because railroads have no other means of bringing money into their treasuries except the price they get for carrying persons and property.

Now, I think everybody will agree, outside of a few railroad men, that there must be this control; that it will not do to constitute the railroads the judges in their own case; and this is conceded by some railroad men, that as long as human nature remains in its present imperfect moral condition, if they are to exercise that power that power will be abused, and I do not say that in order to disparage railroad men, for I think, on the average, they are just as good and as honest as other people.

It has been frequently said in some newspapers and periodicals, and by people in conversation, that the Commission desires to fix these rates in the first instance, in order to get great power in their own hands and to make big men of themselves. Now, gentlemen, that is a mistake.

The Commission has at no time asked that power to be conferred upon them. They do not believe that it is proper or expedient; but they do believe that the Interstate Commerce Commission or some other body ought to exercise the power to regulate and adjust rates after they are made. The question is, shall it be the Commission or shall it be the courts? Somebody, in the end, must decide these questions.

We have said that the railroads ought to fix these rates in the first instance. There are 200,000 miles of railroads in the United States, speaking in round numbers. It would be impractical and inexpedient for a commission of five persons to fix those rates in the first instance. But we do say that some body—the Commission or some other body—should have the right of control and supervision over those rates, and when you approach that question you are confronted with a very difficult problem, I am willing to admit.

A question comes before the Commission in regard to an excessive rate. Great injustice may have been done, and the Commission so find. Under the present law the railroad company can take an appeal to the courts, and on the statement of Judge Prouty on an average it takes four years to secure a final decision by the courts. In the meantime the evil is continued. That, gentlemen, is one of the difficulties. The question is as to whether the order of the Commission shall go in force at once or whether the railroads shall be permitted to open up the whole question by going into the courts and taking an appeal.

Now, the Corliss bill provides that even when the Commission makes that order that it shall not continue to exceed two years. Why is that? Conditions may change. Competition grows up. The necessity of the rate may not exist two years from now that prevails at this time. It may be that a languishing industry needs to be fostered and sustained.

And so the bill proceeds upon the theory that conditions may change. Conditions will also change when an appeal is taken, and a final decision is not had within less than four years; and so the litigant comes out of his law suit about as empty-handed as he went in.

Now, gentlemen, some provision ought to be made by Congress for a speedy hearing upon the decisions of the Commission. There is one of the great troubles. It discourages men from coming before the Commission and incurring expense in these hearings, when the case, if they get a decision in their favor, will go into the courts and remain buried there, as it has been, in some instances, I believe, for a period of six years; and when it comes out there must be a reexamination of the whole question over again to see whether conditions have changed, and there is a necessity of making a change in the rate as originally decided by the Commission.

MR. MANN. Will you let me ask you a practical question there?

MR. FIFER. Certainly, any question.

MR. MANN. Suppose a case where the Interstate Commerce Commission should fix a rate, which in the end should be found to be too low; that order is appealed from in the way prescribed by the statute, but is not stayed by the court. The order, therefore, goes into effect before the matter could be passed upon by the courts in the ordinary course of time, and the two years may have expired, and thereupon, if the railroad under this bill changes its schedule of rates, the Commission, without a new hearing at all, can put another order into effect, ordering the rates back into existence at once, without hearing. How would that—

MR. FIFER. Now, Mr. Mann, that is one of the difficulties in this situation. I think the lawyers will agree that the common law says that the common carrier shall not charge more than a reasonable rate for the carriage of persons and freight. Nobody will dispute now but what there have been excessive charges. Persons who travel and persons who ship freight have been injured, and yet in the whole United States there has not been a single case decided by a court of final jurisdiction awarding \$1 or 1 cent of damages.

Now, the courts, by reason of the progress and inventions that we are constantly making, are constantly fighting on the skirmish line, trying always to extend the provisions of the common law to meet the changed condition of affairs; but when they got down to this question of railroad traffic, it seemed necessary to supplement the common law

by an enactment of Congress, and that gave us the present interstate-commerce act.

Now, it is said if the Commission decides that a rate is unreasonably high in itself, and it is buried in the courts for years, that these shippers have a remedy to recover from the railroad the amounts of their damage, provided the finding of the Commission is sustained by the court.

Gentlemen, that is simply remanding the people back to the rights already granted them by the common law. They have that right already. But when a man is injured to the extent of \$100 or \$500, or it may be only \$25, he can not afford to, and he never will, sue a railroad company to recover his damages.

When a complaint is made before the Commission and a man has the courage to make that complaint, it is not only on his own behalf, but if he wins out and gets a decision in his favor by the Commission, and finally by the courts, that is a benefit to the whole community, because these rates are to be general and universal; and that was one object in the passage of this act, to afford a remedy that the common law, however much the courts might try to expand its provisions and apply it to the new conditions, did not give.

Now, there is a great difficulty just at that point. The Commission decides that a rate is excessive in itself.

If that is to be binding on the railroads, and take effect at once or within a few days, giving them a reasonable time to comply with the order of the Commission, then it is said on the part of the railroads, if the order of the Commission is finally reversed by the courts, that they have paid out money that they should not have been required to pay, or carried this freight at a less rate than they were entitled to have.

On the other hand, if the case, after it is decided in favor of the shippers by the Commission, can be buried in the courts, then the shippers, the whole community, possibly half a State, must suffer, and they come out of the litigation and the controversy just as empty handed as they go in, after the lapse of four years, and after they have incurred expense and the expenditure of much time.

Mr. STEWART. Judge Prouty has said very well that these corporations are public servants.

Mr. FIFER. Yes, sir.

Mr. STEWART. Their status is established by State and Federal legislation, and the tariff charges are a tax upon all species of property in the United States.

Mr. FIFER. Yes, sir.

Mr. STEWART. Why should they fix these taxes, they being public servants? If you are a member of a municipality and own a residence there, a house, you do not fix your taxes?

Mr. FIFER. But he did not mean it as a tax in the ordinary sense.

Mr. STEWART. You have said that the railroad companies ought not to be judges in their own cases?

Mr. FIFER. Yes, sir.

Mr. STEWART. Now, why should they, being public servants, their very life being due to their taking a tax from all property of the United States—why should they have the establishing of that tax in the first instance?

Mr. FIFER. That is a question for this committee and Congress to determine. The courts have already decided that the original power

of controlling the railroads resides in the Congress of the United States, and I take it that Congress can pass an arbitrary law that shall be reasonable and shall not be confiscatory and fix these rates primarily and originally. I do not know why that could not be done. The courts have said further that Congress has the power to delegate this power to the Interstate Commerce Commission.

Mr. STEWART. Yes; but since the combination that Judge Prouty spoke of in the Northwest, what would have been confiscatory before that combination would not be confiscatory now on account of the great increase in the capital stock, and so on?

Mr. FIFER. That is a question of fact and not a question of law, and must be decided after a thorough investigation.

Mr. STEWART. Is it not thoroughly apparent what would not be confiscatory now would have been before the combination?

Mr. FIFER. I think that is so. Of course, a railroad passing through a sparsely settled country where the freights are very high—these railroads must live, they can not run at a loss, and rates will differ in different communities, owing to the cost of carriage; as in the Rocky Mountains, over those great mountains and through the tunnels, and where the snow interferes, and where fuel is dear and water is scarce, it all comes into the question of the rates that the railroad is entitled to have for its services.

Mr. STEWART. Is not this tremendous increase of capital stock since the combination speculative and sentimental rather than real?

Mr. FIFER. Well, of course, different men will have different opinions in regard to that. That is a question of fact which it seems to me does not properly belong to the consideration of this case, and yet I might say that my own views are that the stocks are very largely inflated.

It seems to me that this is one of the vital questions that will confront this Commission and confront Congress if you decide that there must be control, and that is, What kind of control. How are you going to apply the remedy? You say that the Commission shall have the right to decide these questions.

Well, when they decide, their decision practically amounts to nothing if it can be set aside by an appeal. I have heard it suggested that a good remedy would be that when the Commission decides that a rate is too high, or that it discriminates in favor of one community against another, the railroad company should have the right to an appeal, and that that appeal should suspend the order of the Commission until it is finally decided by the courts; but that in the meantime the railroad should keep a strict account of all freights that are shipped from the point where the complaint originates, and if the decision of the Commission is sustained, then they should make restitution to the parties from whom they have collected freight. Some means, gentlemen—if these railroads are to be controlled in regard to these rates—some means should be adopted whereby a speedy hearing shall be had by some court or some tribunal of final jurisdiction in the case.

For myself, I think that a court with all the powers of a court, appointed by the President under some act of Congress, would be a proper tribunal, and they should be men of experience in regard to the transportation problem. Now, it is no disparagement to the profession, the legal profession, for me to say that a lawyer in ordinary practice does not understand thoroughly this transportation problem;

that the Federal courts of the country do not like this kind of litigation. There ought to be men of experience, men trained in these questions, possibly a court of three, whose sole business should be to pass upon these matters; one of them, at least, should be a good lawyer, and perhaps two business men; any way to create a competent tribunal, to pass speedily and intelligently upon the decisions of the Commission after they have been made. There is the crying evil.

Mr. MANN. Do you think that a court sitting at Chicago all the time, limited to that kind of inquiry, could transact all the business that would be brought before it at that one point?

Mr. FIFER. Well, I have not thought into the question closely enough to know. Possibly there might be different courts, something after the fashion of our appellate courts in our own State. Possibly a court of three, sitting at Washington, would be sufficient to pass upon those questions. After they become familiar with the transportation problem they can dispatch their business very rapidly.

In our own State we have a court of claims originally composed of three members of our supreme court. There are seven members in all, and the court was to designate three members to act as a court of claims.

That has all been changed. Experience has shown that it is wiser to have the governor appoint a court of three members, constituting a court of claims. We have a Court of Claims here in Washington under the acts of Congress. Something of that kind should be created here, so that these decisions of the Commission can be speedily and intelligently passed upon.

Mr. MANN. Is it not a matter of practical experience, and can you remember any exceptions, that when a court of any kind, of claims or otherwise, is constituted to pass upon a particular class of cases, that it gets away behind in its calendar by practically encouraging the bringing of litigation of that sort? Can you name an exception to that proposition?

Mr. FIFER. You say where a court is constituted to pass upon a certain class of business—

Mr. MANN. Yes, sir. Can you name an instance where such a court is not behind in its calendar?

Mr. FIFER. I would say that I can not speak intelligently on that question. About the only experience I have is in regard to the court of claims of our State, and I think they keep right up with the docket all the time. I think a case that is brought there and submitted for trial, according to my recollection, is decided within a very few months. There is no court in the State of Illinois where the docket is so little clogged to-day and burdened with cases as our court of claims.

Mr. MANN. It may be true, but I can not imagine it.

Mr. FIFER. Now, I am not speaking in regard to the National Court of Claims. I believe they are somewhat behind, but it is not strange that they are.

Mr. STEWART. Your Commission is not behind?

Mr. FIFER. Sir?

Mr. STEWART. Your Commission has kept up with its business?

Mr. FIFER. Yes, sir; fairly. We have had a good deal of running around to do, you know—

Mr. MANN. You do not have the business that you would have under this bill, and you are still pretty busy?



Mr. FIFER. Yes, sir; we would have to take the evidence. But an appellate court that would pass upon the evidence simply after it is collected and the whole thing is crystallized and put into a nut shell by a previous decision, their minds come at once to the point——

Mr. MANN. Your idea is to have one appellate court to pass upon the orders issued by the Commission?

Mr. FIFER. Well, I do not know; but I think that would afford a remedy.

Mr. MANN. Or——

Mr. FIFER. You must reach a final jurisdiction at some time and in some place.

Mr. MANN. Do you think we could limit that so that you could confiscate railroad property without going to the Supreme Court of the United States and having them pass upon it?

Mr. FIFER. Possibly you might allow an appeal to the Supreme Court of the United States; but surely it would not be a very great hardship or anything unreasonable to say in regard to railroads that after they have had a hearing before the Interstate Commerce Commission, and that a court has reviewed the decision of the Commission, that the decision should stand until it should be heard in a higher court.

Mr. MANN. I was not referring to that. I was referring to the expediency and the practicability of expediting matters in passing them through this court of three members for the whole United States; whether that could be done without getting behind with the calendar.

Mr. FIFER. Those things can only be determined after a long experience.

Mr. STEWART. Do you not believe, from your experience on your Commission, that if your Commission was vested with the power you speak of you could keep abreast of the business? Suppose you were invested with the power of this tribunal——

Mr. FIFER. The final tribunal?

Mr. STEWART. Yes, sir.

Mr. FIFER. And let the decision of the Commission be final?

Mr. STEWART. Yes, sir.

Mr. FIFER. I do not know that that would involve any more work and labor than we are doing now.

Mr. MANN. It would involve a great many more cases than now?

Mr. FIFER. I could not say as to that. Possibly if we had that power it might encourage litigation.

Mr. STEWART. If you established a precedent, would it not lessen litigation?

Mr. FIFER. Yes, sir; cases would be settled, and railroads and shippers and everybody else would comply.

Mr. STEWART. Would be guided by the precedent?

Mr. FIFER. Yes, sir; by the precedent.

Mr. STEWART. Your decisions would be published just the same as the decisions of the courts?

Mr. FIFER. Yes; they are now.

Mr. MANN. How long do you think it would take your Commission to say what should be the rate from Chicago to New York and from Kansas City or Louisville or Minneapolis to New York, not to mention Baltimore and Norfolk and Boston?

Mr. FIFER. That is a very wide question.

Mr. MANN. That is what I thought.

Mr. FIFER. It is an open door, that leads into a very wide field.

We have a case now before the Commission of the middle West shippers against the transcontinental line and the shippers of the Pacific coast. It grew out of a differential between a car and a carload rate. The wholesale jobbers of the middle West complained that that differential was too high, and that it shut them out of the jobbing business on the Pacific coast. They sold to the man who retails, and therefore were compelled to ship in less than a carload rate, and that is higher than a carload, whereas the Pacific-coast jobber ships always in a carload, and puts it right in his storehouse and redistributes it from there.

Now, in that case there was that complaint, and we allowed the lawyers and the litigants to take their own time, and I think we were over one year in taking the testimony before it was finally argued and submitted to the Commission.

Mr. MANN. Can you give me any idea—I do not know anything about it, and you are on the Commission—as to how long it will take to pass upon a question like that?

Mr. FIFER. I just cited that instance to show you. Sometimes we can determine those questions in less time than we suppose we can when we enter upon an investigation. I could not say, Mr. Mann.

Mr. MANN. Of course I do not mean to give the number of days or weeks or months, but whether it would be an easy matter or not.

Mr. FIFER. You would have to go to the different localities. The law under which we are now acting authorizes the Commission to go to different localities, and that is done for the purpose of affording litigants an opportunity to be heard without incurring a great expense.

We go to Chicago and San Francisco and Boston and New York and all around, because if there is a complaint on the part of merchants in any of these localities it would be impossible, and a very great hardship upon them, for them to come to Washington with a great cloud of witnesses, incurring a great loss of time and great expense, and it would be a practical denial of justice; so the law has wisely provided that the Commission, or any member of it—one—can go out and take this testimony in different localities.

Much would depend on how much traveling we would have to do and the number of witnesses we would have to examine. You are a practical man and a lawyer; you ought to be able to give as good an opinion on that as I could.

Mr. MANN. My information is that under this law you would be fifteen years behind your docket inside of three years.

Mr. FIFER. Oh no, my brother; Judge Prouty here suggests that for the first ten years—no, not that long—the first six years, I think, of the existence of this Commission, it was supposed that really they did have this power, and they exercised this power, and the railroads and the litigants submitted to the power, and finally the railroads raised an objection—

Mr. MANN. They never claimed to have any such power as is referred to in this bill.

Mr. FIFER. (continuing). And the court overruled the objection.

Now, the courts have said that when we investigate the case all the power delegated to the Commission by the law is to enter an order that the offending company shall cease and desist from charging the illegal rate, and there we must stop. Anything beyond that is unwarranted,

and is illegal and void. In two cases I believe the courts have so decided. I think, and I believe it is the opinion of my colleagues, that when a complaint is made and the Commission has taken testimony bearing upon the issues made, the arguments have been had, and the Commission is fully advised, that they should have the right not only to say that the offending company shall cease and desist, but to indicate what would be a reasonable rate, because the very mental operation of determining that a rate is too high, and that the company must cease and desist therefrom, involves a knowledge of about what it ought to be.

Now, if we enter an order that they shall cease and desist from charging what we have determined to be an illegal rate, and go further and indicate or fix what shall be a legal rate, that part of the finding is illegal.

One more word and I am through. This law has its civil and its criminal aspects, and it seems to me that if the committee will keep separate those different provisions they will be enabled to deal with this question more intelligently. There are certain cases which are declared criminal by the act. What are they? It is not every act. When a rate has been fixed and published, as required by law, and a secret rebate, or any trick, subterfuge, or device is adopted whereby the rate shall be deviated from, that is made a criminal offense.

There should be no mistake, if a railroad fixes a rate and advertises it and sticks it up in the station house, and then that railroad departs from that rate, there can be no question that they did so with their eyes open, and the act is made criminal. It is made criminal to underbill; false billing and false weighing are made criminal. And both parties—both the shipper and the railroad—are amenable to a criminal indictment for that practice.

All this freight is classified, classes 1, 2, 3, 4, 5, and 6, as the case may be. No one takes a higher rate. They may describe the property as property that properly belongs to the fifth or sixth class, the lower class, whereas it properly belongs to class 1 or class 2.

They may give a false weight, and thereby defeat the objects of the law. The railroad and the shipper may combine upon those questions, and by some trick or subterfuge they can place it in a false class, or they may falsely weigh it, and place it in a wrong class.

Things of that kind are done purposely, and they are done knowingly, and the law visits upon that offense a criminal penalty. But there are a large class of cases that are not made criminal. Take the question as to what the rates should be from New York to Chicago or from Chicago to the Pacific coast, what human sagacity can determine to the cent what the railroad is entitled to. Somebody must determine the differential to be charged between a carload and less than a carload, between the points that I have named.

What human wisdom can say to the cent what shall be charged? Those are questions about which honest men may honestly differ, and they never can be made to agree exactly.

The long and short haul provision, the fourth section, says that you shall not charge more for a short haul than for a long haul over the same road, the shorter being included in the greater, when the circumstances and conditions are substantially the same. Well, who is to determine, now, when the circumstances and conditions are substantially the same? Those are questions that do not involve any crim-

inality. You take the question of shipments from the Mississippi River east and to the Pacific coast, and it costs more from New York to Phoenix, Ariz., than from New York to Los Angeles; and why?

That is the shorter haul included in the greater, but the circumstances and conditions are not substantially the same; and why? Water transportation comes in.

Commercially speaking, New York is nearer to San Francisco than is Chicago, but there is a great deal of freight, more formerly, perhaps, than now, that used to go, and some goes to-day, from St. Louis and Chicago to the Atlantic coast, and then goes around the Horn and the Isthmus of Panama and reaches the Pacific coast. Now, the railroads say that that is not a case of substantially the same circumstances and conditions, and that the railroads at the Pacific coast terminals have the right under the law to meet the water competition at those points.

Those questions can never be made criminal. They are questions upon which persons may honestly disagree; and when a complaint of that kind is brought before the Commission, it is decided that there is no criminality. And, gentlemen, this constitutes, in my judgment, possibly the most important part of this law.

Now, how are you going to prevent, how are you going to stop, these violations of the act which are made criminal? You have been told by my colleagues that there is no penalty denounced against the carrier by the law, and that is true. Gentlemen, these violations are what the law calls *malum prohibita*, and I care not what certain individuals may think of it, mankind generally hold that the same moral turpitude does not attach to an act of that kind as does to a crime, which is *malum in se*, such as burglary and larceny, crimes in the absence of all law.

And you can see, bearing that in mind, what a great difficulty confronts the Commission when it undertakes to enforce the criminal features of the act. Many statutory prohibitions, acts that are made misdemeanors by a statute, a short time ago were no offenses at all. Yesterday the act violated no law; to-day it is made a penal offense, and the offender is subject to a heavy fine, and a term in the penitentiary.

Now, it is my experience that railroads—and I have no quarrel with them at all—have influence; they have always managed to take care of themselves pretty well, and when a rate has been violated, and somebody has subjected himself to the criminal part of this act, and you undertake to secure an indictment and conviction, you have got a great big job on your hands.

These men have friends; they have standing in the community. The whole community may know that they have at different times violated the law, but they have just as many friends as they had before. They are not ostracised in society; and you undertake to convict one of them and you meet great difficulties. Now, what should be done? Judge Knapp has told you, and in that I agree with him, that the corporation itself should be made subject to indictment, and upon conviction it should be punished; of course, it can not be imprisoned; it loses no cast in society, and every person who is cognizant of the facts can be compelled to testify and there is no immunity; and you know, as practical men, under those circumstances you can get testimony and you can get conviction, and if the penalty is large enough, fixed

by the law, it will be just as much of a deterrent as the other, and the testimony will be easily acquired.

I have been on the Commission for a little over two years; I have heard many railroad men testify, and I do not recollect that in any instance we ever secured testimony that would justify an indictment until the hearing in Chicago last January. We have probed that question, at least in some cases. In this very case we went, in the first instance, to Kansas City. We got nothing. We followed it up and went to Chicago, and a clean breast was made of the whole thing. They testified that there was a secret cut, and I think some of them, at least, testified that only one man would know of it; in most instances papers were destroyed bearing the evidences of the violation; no books were kept. How are you going to dig out and get hold of any particular individual? And when you get him you put him on the stand and he has immunity from punishment. How are you going to deal with that?

Mr. STEWART. Adultery and gambling are not malum in se—

Mr. FIFER. No, sir.

Mr. STEWART. But malum prohibita. Do you not think that in the form of malum prohibita these railroad corporations commit greater offenses than highway robbery, which, you say, is malum in se?

Mr. FIFER. I do not know about that.

There is another feature of the Corliss bill, as to whether the word "knowingly" or "willfully" should be inserted. Now, of course, we have cases all the time where there are honest mistakes made as to the rates charged, and there is no pretense that there is any criminality; no pretense whatever.

In regard to the question which you called my attention to, suppose there was a statute against a person being an inmate of a gambling house and no scienter required, but simply the broad statement that there is a penalty upon him if he is an inmate of a gambling house. Now, suppose he wanders in there through mistake. It might be close to a hotel and he might think he was going to the hotel—they are very closely connected sometimes—

Mr. STEWART. It has been decided time and time again that if a man enters a bagnio the presumption is that he goes there for the purpose of adultery.

Mr. FIFER. Yes, sir.

Mr. STEWART. And you have to destroy that presumption by testimony. Mr. Fifer, that is certainly correct.

Mr. FIFER. Take the case of a man who enters a gambling house—

Mr. STEWART. Yes; you would say that the presumption is that he is guilty. And that is the presumption in regard to the railroad company. And the railroad company ought to have to rebut that presumption.

Mr. FIFER. The onus is on that man, but the practice is always to allow him to show that he was there by mistake.

Mr. STEWART. Now, the railroad company, the onus is upon the part of the railroad company, and the presumption is that they are guilty of this offense, and the burden should be thrown upon them to show that they are innocent.

Now, if a party goes to a gambling house through mistake, knowing that it is a gambling house, he can not plead that he did not know it was any offense under the law when he entered there knowing it was a

gambling house. That would be a mistake as to law. He can not be heard to say that he did not know there was any law against it.

Mr. ADAMSON. Take the statute against selling liquor to minors.

Mr. FIFER. Yes, sir.

Mr. ADAMSON. I think the court generally holds the law to be that the onus is upon the seller to know how old the boy is.

Mr. FIFER. Yes, sir; unless there is a statement in the law that he must commit the act knowingly, and knowingly sell to minors. I am glad that you called that up.

Mr. ADAMSON. I have known many a clerk in a barroom to be convicted under that statute without knowing about the boy.

Mr. FIFER. So have I; and in my State we have a statute against the sale of liquor to a person in the habit of becoming intoxicated, or to minors.

Now, the supreme court of our State holds that the saloon keeper sells at his peril, and it makes no difference whether the minor is 7 feet tall and has the beard of a Hercules. As I say, coming back to the illustration that I have given, I do not believe that where a clerk in a railroad office in figuring up makes a mistake in his figures and sends in a bill for a carload of freight, where it is purely a mistake, I do not think there is any criminality there.

The law generally places whisky sellers on a different basis, for that business must be licensed in the first place, and the law distinguishes it from all other business in that way.

Mr. STEWART. In Massachusetts the presumption is that every testator is insane when he makes a will, and that presumption must be rebutted by proof.

Mr. FIFER. Yes, sir.

Mr. STEWART. Don't you think that that rule should be applied to the railroad corporations, and that the rates should be presumed to be unfair, and that they must prove the fairness of the rates?

Mr. FIFER. I hardly agree with that. I think that if the rates are unfair it can be shown, that fact can be shown and some competent tribunal can correct it.

There is another provision of the criminal law that I think ought to be amended, and that is to make the departure from a published rate punishable and treated as an unjust discrimination. My friend, Mr. Mann, asked a very pertinent question yesterday in regard to these packing-house rates from the Missouri River to Chicago. There are only a few great packing houses, and I believe—and I think that is the opinion of all my colleagues—that there was no unjust discrimination in that instance. Although a departure from a published rate, and although in a sense a secret rate, all the persons or corporations who could avail themselves of that cut rate knew of it in some way. The rate on packing-house products from the Missouri River points, the published rate, was 23½ cents. They were actually carrying the goods for 18½ cents, 5 cents less. Now, the query comes up, if there was no discrimination, then who was injured? And why should that be made a penal offense?

Gentlemen, in considering that question I ask you to go back of the shipper and look to the producer. It is true that the man who raises cattle and grain on the Western farm is not financially interested in the warehouseman or the packing-house man who does the shipping, but what he is afraid of and the way in which he may be injured is this:

By the secret rate to the large shipper the smaller ones are driven out of business, and the whole thing is confined and placed into the hands of a few men. Now, that narrows the market in which the producer may sell; it lessens the number of men that will purchase his products, and they claim that it enables a few men by that means to fix the price paid the producer and to fix also, in some measure, the price at which the goods are sold to the consumer.

It was suggested by some one on yesterday, I think, that these conditions had already driven out the smaller man. Well, if the conditions have already driven out the smaller men, if they continue will it not keep them out? That is the question. I submit to the committee, is it not better that there be a published rate stuck up in the station house, so that everybody may know, and if that rate be adhered to it will widen the market of the producer, it will increase the number of men to whom he may sell. The tendency of the other policy is to narrow the market.

I have detained you longer than I had intended, gentlemen. There are other phases of this question that I would like to speak of, but these are the main features. If there are any questions that any members of the committee desire to ask, I will answer them to the best of my ability.

Mr. STEWART. You say that the consolidation in the hands of a few large dealers would narrow the sale by the producer. It would perhaps affect the price, but it would not narrow the sale. Supply and demand would control that, entirely. You said it narrowed the market; it might fix the price to the producer.

Mr. FIFER. What I meant by that was the different individuals to whom he might sell.

Mr. STEWART. But in the aggregate it would not reduce the sale?

Mr. FIFER. I suppose if one man only in Chicago could buy grain that would certainly place great powers in the hands of that individual.

Mr. STEWART. It would not narrow the sale of the producer. The supply and demand would control that.

Mr. FIFER. No, sir; he would always sell.

Mr. KNAPP. He would not get so much.

Mr. FIFER. The plea they make, and I am only making the plea that is made by the producer—

Mr. STEWART. He could not get so much for it?

Mr. FIFER. Yes, sir; he narrows, he limits, his opportunity to sell. One man does not give a good price. There is competition in the purchase of grain where everybody has a fair show and an equal chance, and one man will overbid another, and in that way the producer, it is supposed at least, secures a better price for his product.

Mr. STEWART. Then you agree with Mr. Prouty that the two remedies to be adopted are, first, to punish the corporation, to punish any departure from the published rates—

Mr. FIFER. I think that a departure from the published rate should be made a discrimination, and treated as a discrimination.

Now, in one case an indictment was secured and there was a departure from the published rate, and the evidence was positive, but the court held (the indictment charged an unjust discrimination), and the court said, "Why you have not brought in others to show here that somebody was charged a greater rate and therefore there is no discrimination." The simple act of departing from the rate was not held

to be enough. The departing from the published rate the court held was necessarily discrimination.

I feel that I ought to say, in that connection, that that offense, as I remember it, is punished by both fine and imprisonment. That is discrimination.

There is another drag-net provision in the law which does impose a fine for any violation, but that is a much less penalty.

Now, I do not know why those two provisions of the criminal law should not be amended. I do not know of anybody who would say that they should not be amended.

Mr. MANN. Will you answer me a practical question?

Mr. FIFER. Yes, sir.

Mr. MANN. This Nelson-Corliss bill provides that testimony shall be taken in the first instance before the Commission in fixing a rate, and the transcript of that testimony certified to the court, where the court is appealed to, and then if the court desires other testimony, or decides to have other testimony, that it shall be certified to the Commission, and the Commission shall take that new testimony. I understand the reasons for all that, but do you think it would be practicable or not for the Commission, as a matter of fact, to take all the testimony, in addition to deciding all the cases which would be brought before it?

Mr. FIFER. That is to provide that no further testimony shall be taken?

Mr. MANN. That law provides that if the court concludes to permit other testimony to be offered, then that fact shall be certified to the Commission, which shall take the testimony. Of course I understand the reasons for that, in order to make them make their case before the Commission; but as a practical question, the purpose of this legislation is to expedite the decision of these cases.

Mr. FIFER. Yes, sir.

Mr. MANN. Will it be practicable for the Commission, in addition to its other duties, to take all of the testimony which might be required to dispose of these cases?

Mr. KNAPP. Yes; certainly.

Mr. FIFER. I do not know, Mr. Mann, why that should not be done. It is done in all the nisi prius courts of the country. They hear the testimony—

Mr. MANN. I think in every case, in every big chancery case, the testimony is always taken before a master in chancery.

Mr. FIFER. Yes, sir.

Mr. MANN. And as I understand, you do not have that authority to have that done?

Mr. FIFER. Yes, sir; the courts, I think, in several instances have referred cases back to the Commission and directed them to take further testimony.

The CHAIRMAN. What is your practice as a commission; to take testimony as such before the Commission or before a member of the Commission?

Mr. FIFER. That has not occurred in my time. I will refer to Mr. Prouty to answer that question.

Mr. PROUTY. We can do either thing, Mr. Chairman, but as a matter of practice one or more members of the Commission take the testi-



mony in a case unless the case is of very considerable importance, in which event we usually go as a commission.

The CHAIRMAN. Do you ever depute anybody else to take testimony?

Mr. PROUTY. That can be done.

The CHAIRMAN. You have that authority?

Mr. PROUTY. Yes, sir; that is, testimony can be taken before a notary public.

Mr. FIFER. A deposition.

Mr. MANN. Have you authority to appoint a commissioner to take testimony?

Mr. PROUTY. In a foreign country, but not in this country.

Mr. FIFER. It is the same law in regard to taking depositions.

Mr. MANN. If a law like this was passed, would it not be necessary for you to have authority to appoint a commissioner to take testimony; in other words, would you not be swamped?

Mr. PROUTY. I do not think so, but that could only be tested by a practical trial. As Governor Fifer has said, this Commission for the first ten years of its existence supposed that it had and exercised every power provided in the Corliss bill. I will undertake to point out to you a case where it did exercise every power which is given in this bill, and it was not swamped with business.

Now, you were speaking of differentials. The differentials for Boston, Baltimore, New York, and Philadelphia were decided in 1875 by the Thurman committee, and that differential has remained in effect ever since. The differentials were decided a number of years ago for Chicago, and Kansas City, and Minneapolis, and they have remained in effect ever since. When one of those things is once decided, it goes on year after year, so that the business is less than might naturally be expected.

Mr. FIFER. This matter of referring cases back to the Commission occurred before I became a member, and consequently I know nothing personally about it. I knew that there were cases of that kind in the past, but the *modus operandi* of getting them back into the hands of the Commission I was not familiar with. Now, gentlemen, I believe I have said all that I have to say.

The CHAIRMAN. Will it suit your convenience, Judge Knapp, to go on to-morrow morning at half past 10 o'clock?

Mr. KNAPP. It will, Mr. Chairman.

The CHAIRMAN. Very well.

(Thereupon, at 3.45 p. m., the committee adjourned until Wednesday, April 23, 1902, at 10.30 o'clock a. m.)

---

WEDNESDAY, *April 23, 1902.*

The committee met at 10.30 o'clock a. m., Hon. James F. Stewart, acting chairman.

#### STATEMENT OF MARTIN A. KNAPP, CHAIRMAN OF THE INTER-STATE COMMERCE COMMISSION—Continued.

Mr. Chairman, it was very gratifying to me on Monday, when your chairman suggested that your committee was more concerned just at present considering principles of railway regulations than in discuss-

ing details of particular measures. That seems to be a very wise attitude. We should at first decide what we should attempt to accomplish, and when we have decided that we are prepared to examine the particular methods proposed for realizing our purpose. At the same time the discussion may be so discursive as to be unprofitable, and if we get very far beyond the range of any legislative proposal we are liable to indulge in more or less idle speculation.

So, with your permission, this morning I shall try to bring the discussion to a somewhat more definite and practical basis.

In the ten years and more during which I have been a member of the Interstate Commerce Commission I have endeavored to give careful and conscientious study to the problem of railway legislation. I appreciate its difficulty; I think I understand how serious the question is in its various aspects. My experience and reflection leads me to be very conservative. I think our legislative policy should be developed by evolution and not by revolution, and I am not at all disposed to advocate any very radical or novel additions to the present laws upon this subject. Indeed, I think all the Commission has ever recommended to Congress is that such changes be made in the present act as will enable its purpose to be accomplished and will permit it to effect the results upon railway operations which its framers obviously intended.

We are not prepared, in my judgment, to enter upon novel fields of legislation, and we may wisely, for the time being at least, confine our efforts to such amendments that will give the law the strength and efficiency which it was supposed to have when it was adopted. Nor am I aware of any measure pending before this committee which goes any farther than that.

Now, the while I ask you, gentlemen, to keep in mind the distinction which I endeavored to point out on Monday, for I regard that as fundamental; and clearness of thought at the very foundation of this subject will aid us to intelligent conclusions.

There is a radical difference, fundamental in its nature, between measures which are devised to secure the observance of railway tariffs and measures which are designed to correct those tariffs when they are found to be in violation of the principle of this law.

You can only correct that class of evils which results from departure from the public tariff; that class of evils of which rebates and rate cutting and similar devices are types, you can only deal with them by making them, as the present law makes them, misdemeanors and seeking to punish them as such. Of course all those evils, all evils of this class, have their origin in the competition between carriers, and I do not hesitate to express my own conclusion, at least, after very careful examination and reflection, that so long as that competition remains unrestrained and unregulated, just so long evils of this kind will inevitably recur.

When I ask your committee to amend the criminal provisions of this law, which are found in the tenth section, I do not wish to be understood as implying a belief that those amendments will be a panacea for the evils against which they are directed. I perfectly agree with Commissioner Prouty that railway competition, as it has existed in this country, is gradually and surely disappearing. I do not think it can be relied upon in the future as the agency which shall secure reasonable rates; nor do I believe that it ought to be relied upon. My own judgment is that to secure reasonable rates of transportation and jus-

tice to the shipper as well as the carrier, our legislative policy should, in some respects, be materially altered; that we should recognize the tendency, and in many respects the desirability, of railway association, and devise such measures as will secure the benefits of that association without subjecting the public to the dangers of excessive and unreasonable charges. But I should not be justified, I think, in discussing that aspect of the general question at this session of the committee.

If it should be your pleasure later on to desire my personal views respecting this whole question of railway competition and railway cooperation I shall be very glad to furnish them; but I do not understand that any project of that kind is pending before this committee, and I think I will be likely to serve you best if I confine my remarks to the questions which are involved in pending measures.

So I say that on the theory which now obtains in our statute laws, both State and national, that railroad competition is to be encouraged and enforced so far as possible, and that no form of railroad association is to be legalized; on that theory I say that the amendments to the tenth section, substantially as they appear in the Corliss bill, are of urgent importance and ought to be adopted. I do not know of any person who hesitates to say that the carrier corporation should be made liable for the transactions which are of the character now under consideration.

Mr. STEWART. Before you get through will you suggest any amendments to the Corliss bill which you think would be agreeable to the Commission, if you have any?

Mr. KNAPP. Later on, in another connection.

I want to repeat that there are two changes in the law relating to the enforcement of criminal remedies which are important, against which there is no reasonable objection, against which I venture to say no one will come here and interpose opposition. They are that the corporation carrier shall be made liable, and not simply its agent and representative, and that the shipper shall be made liable who knowingly accepts a lower rate than that provided by the published tariff without being obliged to show that he thereby secured a discrimination in favor of himself and against his business rivals.

Those two changes in the tenth section would greatly aid, in my judgment, the practical administration of the criminal machinery devised for preventing rebates and compelling carriers to observe their published schedules.

Mr. MANN. In your opinion, would it be sufficient to provide a penalty against a shipper who knowingly received a reduced tariff, or follow a provision of the Corliss bill and provide a penalty against the man who does receives a reduced tariff?

Mr. KNAPP. As I said on Monday, I had not supposed that this bill was so framed as to make an innocent shipper liable. I assumed that he would be indictable only in a case where he knew what the published rate was that other people had to pay and secured by arrangement with the carrier a preferential rate for himself. If that distinction can not be made in the law, nevertheless I think the change should be made, because I do not think instances would ever occur where a man actually innocent, acting in good faith, would be made the subject of prosecution.

Mr. MANN. I should think you would find loopholes enough in this

law to lead you to think that it was quite necessary to guard against such things in making a new law.

Mr. FLETCHER. Would not that be extraordinary legislation, rather unusual in this country, to legislate against a man making a good bargain and shipping his merchandise, his stock, or whatever he has to ship, making him liable for taking a less rate, if he could get it; is that not rather an extraordinary provision?

Mr. KNAPP. Mr. Fletcher, I think not. Now, it all depends, gentlemen, upon the point of view. If you say that the railroad is a private industry, just like a farm or a factory, then every man should be free to make the best bargain he can with the carrier whose services he desires. If you take that position, then this entire act to regulate commerce should be repealed and the whole effort at railroad regulation should be abandoned.

Leave it a matter of purely private arrangement, that every man and any man might make his own bargain with the carrier, just as he now makes it with his shoemaker or his grocer. But if you regard the railways as performing a public service, discharging a function of the State, doing a thing which the State is bound to do except it abstains from motives of expediency, then I think you must reach the conclusion that our laws should be aimed to secure precisely equal treatment to all shippers under like circumstances. And, to my mind, it is just as wrong—I mean wrong against social order and the rights of the citizen—to permit one shipper to get his traffic carried at less rates than his rivals pay as it would be to let one man buy postage stamps cheaper than his business rivals or get his imported goods through the custom-house at less rates than other people are compelled to pay.

Mr. MANN. There is no law against a man buying postage stamps as cheap as he can buy them.

Mr. KNAPP. No; but no man can buy them, in the first instance, for any less than a fixed sum, which everybody must pay.

Mr. COOMBS. Here is a distinction, it seems to me, you fail to make. In regulating freight you fix the maximum to be charged. You do not intend to fix the rate, but you fix the maximum, as I understand it. Now, coming within a maximum under the maximum, is not the person permitted by right to engage in whatever arrangement he might make?

Mr. KNAPP. Absolutely not.

Mr. COOMBS. Do you think he ought to be cut off from any field of legitimate arrangement—I mean legitimate on his part—simply because the Government has the right to say to the railroad, as a common carrier, what their maximum charges shall be?

Mr. KNAPP. Yes. If I perfectly apprehend your question, I will answer it this way: The Commission or any other agent of the Government charged with the administration of its laws in this regard should be authorized in certain cases, which I shall come to presently, to prescribe the maximum rate; but the carriers who have the complete initiative in rate making should be at liberty at any time to publish and apply a lower rate than that which has been prescribed. But that lower rate should be open and available to everybody.

Mr. COOMBS. That may be true in theory, but do you seem to go that far when you regulate the maximum rate? Should you go farther than that, into the business of concerns and into the business of individuals who have dealings with the concerns?

Mr. KNAPP. Mr. Representative, the present law goes to that extent.

Mr. COOMBS. I am asking for information; you have studied these questions, and so I am asking you about them. That is my only motive.

Mr. KNAPP. What little knowledge I have gained from experience ought to be at your service, and very cheerfully is at your service. I will be very pleased to answer to the best of my ability any questions you or any other member of the committee may propound.

Mr. COOMBS. I simply wanted to ask the question as to how far you can regulate the common carrier after you have fixed the maximum rates he is permitted to charge, how far then beyond can you go into the business of his concern and the minutia of it and regulate it. That is what I would like you to discuss.

Mr. KNAPP. There is no question about the power of Congress, and, in my opinion, not the slightest question about its duty. No proposition is more intolerable to my mind under modern business conditions than to say that one shipper under present circumstances should be able to make and carry out a private bargain with the carrier as the result of which he secures the benefits of a public service for less than his business rivals pay, and thereby not only get cheaper transportation, but through that transportation get command of the market which enables him to undersell all his rivals.

Mr. MANN. In that connection I would like to ask a question.

Mr. KNAPP. Certainly.

Mr. MANN. You have had recently an investigation of the dressed-beef shipping. Suppose, for instance, that one of the concerns shipping dressed beef after a law like this goes into effect does make an agreement with one of the railroads, which is secret and very difficult to obtain knowledge of, and gets a preferential rate considerably below the published rate. His rival shipper has reason to believe that that is the case, is morally certain that that is the case. What is he to do? Go out of business, or put his time in in endeavoring to enforce the criminal law or in endeavoring to secure a lower rate himself?

Mr. KNAPP. That he will do the latter as a matter of practical conduct I have not the slightest doubt. That is just what happens everywhere.

Mr. MANN. But what would you have him do? You want to have him punished with the \$5,000 fine for every time he does that?

Mr. KNAPP. No; not the man who does not get it, but the man who does.

Mr. MANN. But what is he to do? Go out of business or seek to obtain it himself?

Mr. KNAPP. Well, that, of course, is the hardship which every business man must encounter under possible circumstances.

Mr. MANN. I know of no other case in business where a man is punished for doing that thing.

Mr. KNAPP. Now, let us see. Suppose you are an importer, and you know to an almost certainty that your rival gets his goods through the custom-house on an undervaluation. Are you going to try and do the same thing?

Mr. MANN. We say in Chicago that we will have to go out of business because they do that in New York, and we are making a dreadful kick about it.

Mr. KNAPP. And you ought to.

Mr. MANN. This matter of a duty to the Government, and this mat-

ter of interfering with a private contract are two different things; and if you can name any other case where that is done I think it would be very valuable.

Mr. KNAPP. You see I differ from you on a fundamental idea.

Mr. MANN. You do not differ with me on anything; I am seeking information and not expressing an opinion.

Mr. KNAPP. That is not a matter of private contract——

Mr. MANN. Let us get through the other first. That is purely a matter of argument. That is not a matter of information. What would you have the man do in a case of that sort?

Mr. KNAPP. I can not be made the custodian of that man's conscience or undertake to say what he ought to do.

Mr. MANN. Well, what can he do under a law like this?

Mr. KNAPP. He can lend himself actively to the effort to prevent a recurrence of the wrong by which he is defrauded.

Mr. MANN. Oh, he might constitute himself into a detective or a criminal bureau and lose his business while he was prosecuting his case up through the courts, if he could obtain information at all, which he could not do by himself.

Mr. KNAPP. I grant all that. I think I appreciate its difficulties. If a strong and powerful shipper can bring pressure to bear on a railroad carrier which gives him a lower rate, he drives his rivals out of the field, and right there——

Mr. MANN. According to the theory we have got so far if we passed this law he would drive his rivals out of the field.

Mr. KNAPP. Not at all.

Mr. MANN. Well, what will the rival do now who can not get the lower rate, knowing morally that his rival has a lower rate; what is he to do?

Mr. KNAPP. I say he should do exactly in principle what a business man would do who found himself undersold by a rival whom he believed had stolen the goods.

Mr. MANN. Well, what would he do?

Mr. KNAPP. He does not go and steal some goods himself.

Mr. MANN. No; but he meets the cut right along; he either meets the cut or goes out of business.

Mr. KNAPP. I want to make two brief observations on that point. I see exactly where there may be a divergence of view. As I say, I maintain that these are not matters of contract at all. I do not ride on the cars or have my traffic carried by virtue of a contract with a carrier, but in the exercise of my political rights. A merchant may stand at his door and say I shall not enter. He may refuse to sell me his goods even if I offer him cash for them. He is free to sell to me at one price and to you at another price. All the transactions between men which involve the change of property are contract relations, but the relations between the public and a public carrier are not contract relations, and the rights of the public grow out of their inherent political rights as citizens. The railroad manager can not stand at his station and say that I shall not enter. He is performing a public service; he furnishes the facilities of that public service under conditions which require him to offer them to everybody and on equal terms. That is one observation.

The other is, if you take the contrary view, you simply turn over the commerce and business of this country to a few multimillionaires;

and kindred to that I beg to make this observation, and I think it is worth a moment's attention:

I believe that independent of the exercise of public authority there is no agency which will operate so forcefully to bring down published rates as to see to it that they are absolutely observed in all cases. And why? Railroads are sensitive to public opinion and they yield to public pressure. The man that presses them hardest is the man that has got the largest shipments to offer, and if a carrier in a given situation, by yielding to the importunity and pressure of one or more powerful shippers, can thereby hold up his rates as to everybody else, he is not going to reduce them. When it gets to the point where the biggest shipper can get no better rate than the smallest shipper, where the published tariff is applied without variation or exception to everybody, you will have the united pressure of the entire business community demanding a reduction of rates, and you will not get it in any other way.

Mr. MANN. And the millennium?

Mr. KNAPP. No; not the millenium.

Mr. MANN. You will have the millenium before you get to the point where nobody will make a bargain if he can which will be to the disadvantage of somebody else.

Mr. ADAMSON. I understand you to say as to whether a merchant will trade with you is a matter of his own business; but as to whether you ride on a railroad train or not, no matter what your condition or circumstances, is a political right which nobody can gainsay. I understand that few of the railroads are chartered by the Federal Government; that they are chartered by the States. Is that true?

Mr. KNAPP. That is quite true.

Mr. ADAMSON. Do you derive your jurisdiction and authority for the Interstate Commerce Commission anywhere except from the clause authorizing Congress to regulate interstate commerce and commerce with the Indian tribes?

Mr. KNAPP. That is the principal source of authority.

Mr. ADAMSON. Is not that the only thing in the Constitution giving you authority?

Mr. KNAPP. Well, Mr. Representative, we do not any of us know how far our Supreme Court would go in a direction of this kind under the general-welfare clause of the Constitution. I agree with you that the only specific authority for railroad regulation is found in the clause you have referred to.

Mr. ADAMSON. When it can not be stretched any further we go to the welfare clause as more elastic. Now, does the commerce clause recognize any such distinction as you make between public or quasi public institutions and private institutions?

Mr. KNAPP. In that clause.

Mr. ADAMSON. What clause does?

Mr. KNAPP. By giving the Congress the right to regulate commerce. It is not the right to regulate private business.

Mr. ADAMSON. In regulating commerce, interstate and foreign, and commerce with the Indian tribes, does that clause make any distinction as to the business which corporations do and the business which private individuals do? Do we not under that clause legislate on every conceivable subject about what individuals do and what mercantile firms do, and everything like that?

Mr. KNAPP. You have legislated on some things of that kind which the Supreme Court has said are unconstitutional.

Mr. ADAMSON. We have spent six or eight weeks here in legislating as to what men should eat and wear, and whether one firm should sell certain things or not in competition with other firms. That is all under this clause.

Mr. KNAPP. So far as legislation can be sustained under the commerce clause you have a right to enact it.

Mr. ADAMSON. What is in it to justify such a distinction as you make? Private men, merchants, all sorts of shippers and manufacturers, and everybody else deal in interstate commerce. That clause gives us the right to regulate that.

Mr. KNAPP. Surely.

Mr. ADAMSON. Then why is not the question Mr. Mann asked you entirely pertinent?

Mr. KNAPP. I admit its pertinency.

Mr. ADAMSON. And you did not think they were on a parity at all; you said we had a right to deal with the railroad question because they were quasi public institutions.

Mr. KNAPP. That is quite right.

Mr. ADAMSON. When the Government that is dealing with them has not chartered a single line, and yet all the authority you have is from that clause which gives us the authority to regulate commerce between the States without regard to corporations or private individuals, one business or another business.

Mr. KNAPP. I think this is getting very far away—

Mr. ADAMSON. I do not care how far it is leading; I wish everybody would see how far it is leading.

Mr. KNAPP. There was a law before the Federal Constitution and before any Congress was created. There is no rule of social order, there is no public regulation which has governed the affairs of men more ancient, more unquestioned—

Mr. ADAMSON. There was not any railroad ahead of the Federal Government.

Mr. KNAPP. Pardon me (continuing)—than the common highway. Now, in the very constitution of society the means of communication must be provided.

Mr. ADAMSON. By somebody.

Mr. KNAPP. It must be provided by the State, and there is no State in modern history—and you can go very far back in ancient history to find an exception—that has not provided the public highway. And this is the point of importance, Mr. Representative. Take all history that you can find on the subject and you find there is no exception to the rule that in the use of the public highway one man had exactly the same right as another; and such a thing as preferences in the way of the public highway has never been tolerated in any civilized country, and when all our inland commerce was carried over the ordinary highway, when all our distribution was by animal power, every individual had exactly the same right as any other individual in the use of the only agency which then existed.

A MEMBER. How about turnpike roads?

Mr. KNAPP. Turnpikes are no exception, because the tolls were always the same.



Mr. ADAMSON. Will you give me an instance where the Federal Government has fooled with turnpike roads?

Mr. KNAPP. No, sir.

Mr. ADAMSON. The Federal Government has nothing to do with matters of that kind.

Mr. KNAPP. If you will read the Kentucky bridge case, and one or two other cases that I might be able to cite you, you will find the subject fully discussed.

So I start, gentlemen, with the proposition that the right to use the highway on equal terms with every other man is an inherent and inalienable right.

Mr. ADAMSON. I understand the theory, and have long understood it, that if you do not find the authority in the Constitution which you want you can get around it by saying that the law would have been so if we did not have the Constitution; but in reference to the subject under discussion the only authority you have at all under the Constitution, as I understand it, is the authority given you in that one clause in reference to commerce.

Mr. KNAPP. The distinction I made has been drawn by the United States Supreme Court, drawn plainly and repeatedly drawn, with such clearness of definition that no man who reads can misunderstand. Take a familiar illustration. Congress enacted what is known as the antitrust law. I venture to say at the time it was passed not one man out of ten believed that it had any application to railroads; but it has been so construed by the Supreme Court that it does not apply to anything else; and if you will take the trouble to read what the Supreme Court said in the sugar case under the antitrust law and what it said in the trans-Missouri case and in the Joint Traffic Association case you will see exactly the distinction I make and you will see it verified with citation of authority which puts it beyond-doubt.

Mr. MANN. Do you say the antitrust law does not apply to anything but railroads?

Mr. KNAPP. I say practically it does not apply to much else.

Mr. MANN. Do you say that?

Mr. KNAPP. I do not care to discuss the antitrust law. I say broadly that the construction which the Supreme Court has given it does not give it much field for application except as to railroads.

Mr. COOMBS. Speaking of the penal clause, putting a penal clause in the bill which would render liable the railroad companies and the shippers for making any combination or entering into any conspiracy to cut rates that is in the nature of a conspiracy between the shipper and the railroad to destroy other shippers, could there possibly be such a thing as prescribing punishment for one without prescribing an equal punishment for the other?

Mr. KNAPP. Undoubtedly.

Mr. COOMBS. How could you do that. Could you constitutionally say that one of the conspirators was guilty—that is, the railroad—and not say that the other was equally guilty?

Mr. KNAPP. Oh, yes. Take the most familiar illustration: Laws in many States regulate the sale of intoxicating drinks, making a violation of that law punishable—

Mr. COOMBS. But that is not a conspiracy against some one else who wants to drink or wants to sell.

Mr. KNAPP. I will not undertake to say that; but the point is now

that there may be two parties to a given transaction, one of whom is liable for indictment and punishment for his participation in it, and the other not liable. As I said on Monday, gentlemen, if in your judgment no shipper should be liable at all, I am perfectly content with that view.

Mr. COOMBS. You think that would be constitutional, do you?

Mr. KNAPP. I think there is a good deal to be said in its favor; that as a practical method of giving efficiency to this law it might be wise to say that the shipper is not liable at all. Let him be free to get the best bargain he can and put the liability, the criminality, solely on the carrier. But I have assumed that you were not disposed to make so radical a change as that in the law.

Mr. ADAMSON. That makes the inducement to harrow the railroad companies to try to induce them to do wrong.

Mr. KNAPP. I do not say I favor it. It does not appeal to my sense of justice. But as the present law stands you attempt to reach the shipper and you should have a provision which would enable you to actually reach him, and if you can reach the shipper only when he gets a discrimination in favor of himself you defeat the purpose of the law, which is to include the shipper. If you are going to make the shipper liable at all, make him liable whether there is a discrimination or not.

Mr. ADAMSON. Make him liable for attempting it?

Mr. KNAPP. Yes; for attempting it. If you think best to leave the shipper out altogether and subject only the carrier to the criminal remedy, very well; I have no quarrel with that position. So, to put it together for a moment, I am only suggesting that, so far as you are to rely on the use of criminal remedies to prevent such offenses as rate cutting and rebates and other secret practices, you ought to amend the law in the two respects I have pointed out. They would not increase the authority of the Commission in the slightest degree.

When you make a given transaction a misdemeanor, you thereby remove it from the control of any administrative body. A misdemeanor under the act to regulate commerce is exactly the same sort of thing as a misdemeanor under the postal laws or the revenue laws or the tariff laws; and in every case when you make a given transaction a misdemeanor you can only proceed, having regard to constitutional rights, by indictment and trial before a petit jury, and you can not have one system for misdemeanors under the act to regulate commerce and another system for misdemeanors created by other laws. But I do say that the two changes suggested in the present law will very greatly aid, in my judgment, the prosecuting authorities and the Federal courts in their efforts to prevent these offenses. And, as I have already said, I have not yet heard anybody make objection to them, and I venture to say that no man interested in railroads or otherwise will come before this committee and indicate the slightest objection to the two changes in the law which I have now referred to.

Now, unless you desire to ask some questions upon that branch of the case, I will, with your permission, proceed to the other one.

Bearing in mind that the railroads exercise the initiative in rate making; that they are free in the first instance to put in just such tariffs as they see fit; that they are under no legal restraint in that regard, the question comes, What will you do or undertake to do in providing methods by which that tariff rate itself can be changed if it

is found to be excessive or unfairly adjusted as between different communities or different articles of traffic?

That is the question. And I beg to say, gentlemen, that that is the great question, because as anyone must see, following out the suggestion made by Commissioner Prouty yesterday, the railroad competition which has produced all these secret arrangements, the competition without which these secret practices would not occur, is a thing that is not much longer to remain; whether restraint is put upon that competition or permitted by legislation in that regard, or whether in default of such legislation and induced powerfully by the existing legislative policy of the country, or whether, as the result of the natural and inevitable tendency there is to be a very complete railway combination, and I do not believe there is any earthly power to prevent it. Competition between different lines of railway which has existed and which has had its influence upon rates, will, to a very great extent, disappear. And in that connection, I need not enlarge upon the very suggestive statements of Commissioner Prouty yesterday.

I may, however, if you will bear with me, allude to one matter that is very important in that connection. I said on Monday that I thought you would be surprised upon examination to find how slight and inconsequential has been the reduction in tariff rates in this country, say in the last ten years, which can be attributed to railway competition. There is a form of competition, however, which has a very powerful influence upon tariff rates and upon attainable rates, and that competition will continue for a long time to come. That is the competition of the markets. Chicago originates an immense tariff; so does St. Louis. The carriers leading from Chicago need that traffic for the revenue it secures. The carriers from Chicago therefore have got to make a rate as compared with rates from St. Louis which will enable the Chicago man to do business, for the railroads are just as anxious to get the traffic as the merchant is to sell his goods, and that is a thing that is going on all over the country.

New York and Philadelphia and other cities on the Atlantic seaboard are competing for the enlarging market south of the Ohio and Potomac rivers, and Chicago and Milwaukee and other cities in the Middle West are also eager to secure the trade of that same territory, and the lines which lead from one section of the country in that consuming territory and from the other section of the country are not likely to be confederated, and if they could be it would not be of any advantage to either of them; and the pressure of the producing public to sell the goods and the competition between sellers in the consuming markets has a very powerful control upon obtainable rates. That influence of course is to remain with us. But the influence of mere railway competition, the mere rivalry of the carriers themselves, is a thing we can no longer rely upon.

Now, I say the carriers are to go on as now exercising the initiative of rate making, and whether separate and independent or combined and confederated, whether controlled by different boards of management or practically dominated by one or two men, they will still be under no legal restraint, in the first instance, to establish and impose just such tariff rates as are induced by their interest. And in that state of things the question comes—gentlemen, it is a question for you a great deal more than it is for me, vastly more for you; your responsibility far exceeds mine—the question for you is: Will you provide

any way by which when the combined railroads of the country publish a tariff and impose it upon all shippers the question of the reasonableness of that tariff will be open to consideration, and if it is found to be excessive or to be unfairly adjusted as between different communities that there shall be some way by which the injustice can be corrected? That is your question, gentlemen.

For myself, so far from coveting authority, I should shrink from the responsibility involved in its exercise. So far as my personal effort is concerned, if I shall remain a member of the body to which I belong, I should feel much less strain under the law as it now is than under one which added to the actual authority of the Commission; because it is a very great responsibility to assume. But it is a question of the most vital public interest. It is a question which comes directly to the lawmaking branch of the Government. It is for you to say, gentlemen, not for me. It is for you to say whether the tariff rates which the combined railway interests of this country see fit to publish and impose upon the public shall be subjected to any actual control.

If not, leave the law as it is; if otherwise, then you must make some change in it.

That brings me to speak briefly about the changes proposed in this regard by the bill before us. Let me say again that I am not advocating any radical alteration in our laws, any great reach of authority by the Commission. I undertake to say that the changes which would be effected by the adoption of the Corliss bill, as far as it relates to the matter I am now discussing, would only put the law just where everybody supposed it was when passed. For ten years the Commission charged with the administration of this law—from 1887 to 1897—assumed that it had authority to do everything which this Corliss bill would permit it to do. And there are two things I might say in that connection.

When everybody believed that there was no such outcry against the danger of giving the Commission authority, and when everybody believed that—and I venture to address this particularly to Mr. Mann—the Commission was not overwhelmed with a vast number of complaints; they did not exceed in number the ability of the Commission to dispose of; nor do I believe that the changes proposed by this bill would result in flooding the Commission with a vast number of complaints.

Mr. MANN. It would if we can take any criterion from the statements made by the witnesses we have had before us.

Mr. KNAPP. I would answer that in this way, Mr. Mann. If you reason from the answers of the witnesses before the Cullom committee in 1886, before this law was passed, you would have been equally warranted in saying that when that law was passed the Commission should be flooded with complaint; but the law was passed and the flood did not come. There are complaints, quite numerous complaints, and many of them are important, but I do not think it is at all beyond the ability of a capable Commission to dispose of every complaint which would come up, with reasonable promptness.

Mr. MANN. Of course, I have heard the statement made a great many times that for the first ten years everybody believed that the Commission had power to fix rates. My recollection is that the Congress that passed the act did not believe they were giving such

authority. The act does not confer any such authority, and the railroads have generally denied that any such authority existed. What the fact may be I do not know; I question very much whether everybody believes it.

Mr. KNAPP. I think I was careful not to say that everybody believed it. I spoke of the general popular understanding. And let me say now, in support of that, that in the complaints which were filed before the Commission—I am speaking now of formal complaints which under this law may be served on the carrier and which can only be investigated after notice and full hearing—and which they were required to answer, not one of them in answering set up the want of authority on the part of the Commission to grant the relief which they complained of.

Mr. MANN. Did not those petitions invariably declare that the rate was unreasonable?

Mr. KNAPP. Yes; and in many cases asked for a specific reduction. More than that, Mr. Mann. When the Commission took proceedings in the courts to enforce orders which had been disregarded in the respect I am now considering, which is, as you know, by suit brought for that purpose, based on the Commission's findings, and the carriers answered this, they did not then set up the want of authority on the part of the Commission to enforce the order which was sought to be enforced by the proceedings, and the question was not raised until nearly ten years after the Commission was organized, and was not decided until along in the year 1897, and then in a case which involved other questions and in an opinion which left much room for doubt as to what the Supreme Court would say when the precise question came before them. That is the actual history of the thing.

Let me say further, Mr. Mann, in the first eight months after the Commission was organized, then one of the most eminent jurists this country ever produced, Judge Cooley, was its chairman, the Commission made orders which in principle and in terms covered every order which the Commission could make under this Corliss bill.

Mr. MANN. It has been stated that Judge Cooley did not believe that the Commission had authority to make rates.

Mr. KNAPP. I know it has been.

Mr. MANN. I said did not "believe." I should have said "decided" that the Commission did not have authority to make rates.

Mr. KNAPP. I do not think Judge Cooley is on record as saying that. I had the honor to be associated with him, to my great advantage, for some months upon the Commission—in my first service with the Commission—and I never heard him say that. I know he joined in decisions where that authority was exercised,

Mr. MANN. You know that claim is made?

Mr. KNAPP. Oh, yes; do not misunderstand me; I am not for a moment pretending that the law was clear in that respect, and I am not implying the slightest criticism upon the Supreme Court of the United States.

Mr. MANN. I understand; it is a question of what the Commission actually did.

Mr. KNAPP. On the contrary, I think the Supreme Court has correctly construed the law as a matter of statutory provision. There are one or two questions not relating to the question I am now discussing on which I am not able to bring my mind into harmony with the decision of the court; but so far as its decisions affect the question I

am now discussing I am bound to say that as interpretations of the statute the decisions are well grounded. And I am only suggesting, not that the Supreme Court is wrong, but that this law ought to be corrected—can wisely be corrected so far as to give the authority which was popularly supposed to be invested in the Commission.

I will add, Mr. Mann, that while the statute is vague and uncertain and had to be settled by the Supreme Court, some of the ablest lawyers in the country are on record in written opinion affirming that the Commission had the authority which it attempted to exercise during that period.

Mr. MANN. You know a lawyer will give an opinion on any subject or any side of any subject if you get the right one.

Mr. KNAPP. I have no doubt you are as familiar with that question as I am, Mr. Mann. Now, let us see for a moment just what it is proposed to do. Let me put it in this way. The Congress has absolute power. The Supreme Court, as far back as 1825, gave to the commerce clause of the Constitution the broadest possible construction. It affirmed on that early date, and has repeated the affirmation many times since, that the power given to Congress by the commerce clause is plenary and exclusive, and that it is subject to no limitations whatever except such as are found in the Constitution itself. And they decided, further, away back in that early day, that that power extends not only to the subjects of commerce but to all agencies and instrumentalities by which that commerce is carried on. So that not only the things shipped but every appliance which is used for that transportation is completely and absolutely in the control of the Federal Congress.

Now, no one is proposing that the legislative power of Congress shall be transferred to the Interstate Commerce Commission. That would be an absurdity. Now, what is it that is proposed? That some portion of that authority be delegated, and under specific conditions. For example, the Commission can to-day make no order which even condemns an existing rate until a complaint has been filed, until a complaint has been served on the carrier, until there has been an investigation upon notice with full opportunity to disclose all the reasons for maintaining that rate. If the Commission should to-morrow make an order declaring any railroad rate to be unreasonable without such a petition and without such an investigation, the courts of course would refuse to enforce it, and say that the Commission had not any authority to make it. That is too obvious for discussion.

Mr. RICHARDSON. Right there; you say you can not now institute any proceedings without a complaint. Do you propose to give authority to the Commission to go forward and institute proceedings without a complaint?

Mr. KNAPP. No. On the contrary, I am very much opposed to that. While some States have gone to that extent, I think it would be very unwise for the Congress to undertake that by direct legislation or by any power to delegate that to the Commission.

Mr. MANN. I have wanted to ask you a question in reference to that. If a petition is presented under your practice complaining of a particular rate, what do you do if you find that you want to extend your order further than is suggested in the petition? Suppose a complaint is made by one city against a rate, and that is all that is referred to; but that involves the rate to another city.

Mr. KNAPP. Perhaps I can best answer that, most intelligently answer it, by describing briefly what actually happens. Now, in many cases where a community feels aggrieved, either because it says that all the rates it pays are too high or because it conceives itself to be prejudiced because some rival community gets more favored rates, frequently a competent lawyer is employed in the first instance who prepares a petition, such as is contemplated under the present law, a petition which is ample in all respects, which sets forth the facts, gives the nature of the grievance, the relief which is demanded, and which is believed by them to be justified. In such a case as that the Commission on receiving the complaint files it, and thereupon serves a copy to the carriers, which are made defendants in the proceedings, and requires them to answer ordinarily within twenty days, and when their answers have come in, then the case is at issue; it is like any suit in equity. And then the time and place is fixed for hearing.

Then the parties appear, produce their witnesses, and they are sometimes cross-examined, and the fullest opportunity given to both sides to disclose all the facts which bear upon the particular grievance presented by the complaint; and then the Commission decides. That is a very common thing.

But it very often happens that complaints come to us in the form of letters, or they are drawn by some business man or some lawyer who is not familiar with this law, and they are inartificially drawn. The facts are not properly stated. They fail to allege, perhaps, the jurisdictional facts; they may fail to make all the carriers who are interested in the rate parties in the case. Now, when a complaint of that kind is received we do not file it as a matter of course. We take it up with the parties by correspondence, and explain that if they wish to present the grievance their complaint needs to be amended, and possibly other railroads brought it. In other words, we aim to avoid all technicalities and not hear a case by testimony and documentary proofs until there is a complaint served upon the carriers which apprises them fully and fairly and gives them every opportunity to suspend a rate which is assailed.

Mr. RICHARDSON. Do you not think it would be a better plan, according to the rule in all courts, to let them get up their whole case, instead of the judges helping them?

Mr. KNAPP. Well, Mr. Representative, these are not complaints of individuals, and you must bear in mind all the while that any order that is made affects everybody as well as the complaining party.

Mr. RICHARDSON. But bear in mind this, also, that a judge who fixes up the amendment and so on is likely to sustain it.

Mr. KNAPP. Judges are holding court to settle disputes between individuals. The Commission is not a court. It is an administrative body. It is charged with the administration of a law. It is the duty of the Commission to use every proper method of realizing as far as possible the purposes of that law and administering it in the interests of justice and not in the interest of individuals, and I do not think the plan which the Commission adopts is open to any criticism. I think it is a fair and honest one.

Mr. RICHARDSON. Then it would be equally fair to give the railroad the opportunity of any suggestion in their answer?

Mr. KNAPP. Oh, they have the opportunity.

Mr. RICHARDSON. You make the same suggestions to the railroads?

• Mr. KNAPP. They make their answer, of course.

Mr. RICHARDSON. They generally have competent and able lawyers; there is no trouble about that.

Mr. KNAPP. Surely.

Now, not only can the Commission make no order until such a complaint has been filed, served on the carriers, answered by them, and the issue tried, but it can only make such an order as is justified by the facts proven. The Commission has no arbitrary power to make rates. It can not act in any *ex parte* or *ex cathedra* manner. You gentlemen can pass a law and fix the rates on grain from Chicago to New York without giving anybody a hearing; it becomes the law of the land. We are not proposing that the Commission shall do anything of that kind, and it is assumed that all the safeguards which are now provided shall be continued and that the Commission shall have no authority to even condemn the rates which carriers themselves establish, except upon a complaint investigated after the necessary and full hearing. That is all that is proposed.

Now you come to the crucial question: Shall the Commission have any more authority in such a case than simply to say this rate that is complained of is wrong and you must stop charging it, or shall the Commission in such case have authority to name the rate which it thinks should be substituted in the future for the one thus condemned? That is all there is of it. Now, at present, since the decision of the Supreme Court, of course our decisions have conformed to that construction of the statute; and when a complaint is made that a rate is excessive, and that has been served on the carriers, and that has been answered, there has been a trial of the whole question, with every facility and opportunity to show all the facts which bear upon the question. All the Commission can do now is to say if it so finds upon the facts, if it is warranted in so finding, "This thing you are doing is wrong, and you must stop it." That is all we can say. And I am assuming in that, Mr. Mann, that the Supreme Court will sustain that authority whenever the precise question comes before it.

It has not done so yet, but I assume, because I firmly believe that if the rate complained of is a dollar and the Commission after this inquiry in the way I have described says a dollar is unreasonable and therefore violates the first section of the law and makes an order requiring the carrier to cease and desist from thereafter charging that rate—I believe the Supreme Court will affirm the authority of the Commission to make such an order.

Mr. MANN. I should say that the opinions of the Supreme Court on other cases left that as clear as daylight could possibly leave it.

Mr. KNAPP. I had not supposed that there was any doubt about that.

Mr. MANN. They have said so repeatedly.

Mr. KNAPP. The result, of course, is that after all this elaborate investigation, which may consume considerable time and involve considerable expense to the parties, the Commission can go no further than to condemn the particular thing complained of without being able to order something to be put in substitution which shall remove the grievance; and of course, in such a case as I have named, if we could condemn a rate of a dollar, the order of the Commission could be complied with by making that rate 99½ cents.



Now, all that is proposed is that in such a case as I have named, in order to give the Commission jurisdiction at all, there must be a formal complaint served on the carriers, opportunity for them to answer, and a full hearing conducted with all the formality of a judicial inquiry. Then if the Commission in such case and upon the facts thus disclosed reaches the conclusion that the rate in question is wrong, it shall have authority to name the rate which it thinks would be right, to be put in place of the one in controversy.

The CHAIRMAN. Under the practice of the Commission and under the law, how comprehensive might that question be; could more than one rate—that is, one rate on one article between two places—be considered at the same time under this procedure?

Mr. KNAPP. Undoubtedly.

The CHAIRMAN. Or could there be grouped many?

Mr. KNAPP. Undoubtedly. All the rates could be assailed in one procedure. It is within the scope of the bill.

The CHAIRMAN. Then there may be more than one party?

Mr. KNAPP. Surely. It is ordinarily the case that a complaint is against more than one carrier.

The CHAIRMAN. Then in that event in one action and as the result of one hearing under this section the Commission would be authorized to fix the entire rates of a State, possibly, or of a number of States, a group of States? Is that your judgment?

Mr. KNAPP. I think I may say that that would be within the possible scope of the measure, but I do not see how that could practically occur, because no—

The CHAIRMAN. Give us some idea of the extent to which it might occur in your judgment, or probably would occur?

Mr. KNAPP. Well, before doing that, let me suggest something which I think should be kept in mind on this branch of the discussion. In my judgment, it is one thing to condemn a rate simply because it is excessive, and it is quite another thing to condemn a rate because it is discriminative.

The constitutional rights of the carriers in respect of their revenues would only permit the reduction of a rate where no element of discrimination enters except upon satisfactory proof that their revenues under the rate complained of were greater than they were entitled to receive, and that the reduced revenue which the lowered rates would produce would still be all that they would be entitled to exact from the public; but where the element of discrimination enters, as the Supreme Court has said, neither the Congress nor the administrative body would be under quite the same limitations, because the carriers have no right, merely for the purpose of getting more revenue, to so adjust their rates as to unduly prejudice one community or give a rival community undue advantage.

While I agree with what Commissioner Prouty said, that the future question, the question the country is coming to presently, is the question of the reasonableness of the general basis of rates, the questions which so far have come up, excepting the recent one which has grown out of the raising of rates by changes in classification, with that exception the complaints have more generally been complaints of discriminations between localities or between different articles of traffic, and the grievance most commonly asserted is a grievance of that kind.

To illustrate, Mr. Chairman, the Commission conducted an investiga-

tion some four or five years ago which involved great interests, and that was the proper differential on grain originating, say, at Chicago, as a typical point, to Boston, New York, Philadelphia, Baltimore, and Newport News. What should be the adjustment of grain rates—the relation of grain rates from a common center to those different ports? That is a great question; but, as Commissioner Prouty said yesterday, somebody has to settle it, and the question is, shall the carriers be free to settle it just as they see fit, no matter what consequences to the communities or to individuals may result, or shall public authority intervene to some extent and, under proper restrictions, control in a degree that judgment?

Bear in mind another thing, gentlemen. It is not proposed that an order of the Commission made after this careful hearing shall be final. The bill provides that any carrier can go to court to get rid of it, and the court is required to stay it unless it finds that that is a just and reasonable and lawful order.

Therefore, before any rate can be changed under this Corliss bill there must be a determination of the Commission reached in the careful manner I have described, and there must be a decision by a court, or made at the instance of the carrier that that is a just and reasonable and lawful order. Now, is that too much?

The CHAIRMAN. That scarcely answers the question. I wanted your opinion as to how far this authority might be exercised in a given case. Has it ever occurred that the entire schedule of rates as filed by a company, a carrier, has been in their entirety assailed in any one proceeding before you?

Mr. KNAPP. That has occurred in numerous cases, Mr. Chairman, but only (I am very confident that I am correct) in those cases involving the long and short haul clause.

Mr. CHAIRMAN. In a case like that, where there was a sort of blanket charge covering the whole of a schedule, and the entirety of the business of a carrier, would it be competent in that kind of a case, in your judgment, under the authority proposed to be given by this bill, for the Commission to make out an entire new schedule of rates covering the whole of the business of that corporation so far as their compensation for service is concerned?

Mr. KNAPP. I am not perfectly sure that I apprehend. Let me see. It is true now, as I said, in cases which involve the long and short haul clause, as you gentlemen all know, in the territory south of the Ohio and Potomac rivers and in the territory west of the Missouri River, there is a very general system of making rates under which there is a lower rate to the distant terminal or the basing point than is applied to intermediate points.

The CHAIRMAN. Waiving that question of the long and short haul, and taking this subject as involved under that kind of inquiry or complaint, would you consider a general charge made by a citizen that involved all of the rates of a complete schedule of a railroad, covering its whole system, if they had made such a schedule as that, or would you require a specific statement of just the complaint that he wanted to make with regard to some particular charge? It would be in the nature of a general demurrer. Would you require him to be more specific?

Mr. KNAPP. So far as I now recall, Mr. Chairman, no complaint has ever challenged the entire schedules of a carrier except for discrimi-

nation, either under the long and short haul clause, which is the common type, or because of the widely different rates between two places, at about the same distance from a common center. In other words, in every instance where the entire schedule of rates has been challenged it has not been for inherent unreasonableness, but for its discriminating results, and the bill does not change the present law in that regard in any particular, and it does not change the fourth section.

I might say for your information that there is nothing left of the long and the short haul clause of the present law. The construction which it has received from the Supreme Court has deprived it of all vitality. No violation of the long and short haul rule ever occurs except because of competition; and the Supreme Court has held that competition, whether the competition of carriers or of markets, or what not, may constitute the dissimilarity of circumstances and conditions which justify the carrier in charging more for the short distance than for the long distance.

So as that fourth section has been construed, it might as well be dropped from the law. In my judgment we can do nothing under the fourth section to-day which we could not do under the third section. It is a discrimination between localities. The specific type of the discrimination, the higher charge for the shorter distance, which most people assumed was to be separately treated or specially treated by the fourth section, is unaffected by that section now in the way it has been construed.

(Thereupon, at 12 o'clock m., the committee took a recess until to-morrow, Thursday, April 24, at 10.30 o'clock a. m.)

---

THURSDAY, *April 24, 1902.*

The committee met at 10.30 a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Mr. Thurber has been here several days from New York, and if there be no objection we will interrupt the order to give the floor to him for ten minutes.

#### STATEMENT OF MR. FRANCIS B. THURBER.

MR. THURBER. Mr. Chairman and gentlemen, I appear before you as representing the United States Export Association, which is a union of American interests in 34 States, with membership in 34 States, that are interested in widening the markets for American wares, and our view of it, therefore, is not sectional. It is not that of any particular port or any particular market, and we are not opposed to the Corliss bill in all its features, but we think it is defective in some of them.

In so far as the bill strengthens the powers of the Interstate Commerce Commission for investigation and preventing of unjust discriminations, it is desirable, but we think that conferring the right, making the power, to the extent that the bill does is unwise. For instance, one section of the country may have the idea that a rate is unjustly discriminating against that section. At present we have that sentiment in New York. They feel that the differentials between the various Atlantic ports are unjust to New York, and there is a feeling on

the part of our local merchants that making lower rates for export is unjust to our local trade. Well, it is perfectly natural that they should feel that; but looking at it in its widest aspect, it seems to me that there should be an elasticity in the making of rates which would permit the placing of our surplus in foreign markets in competition with the products of other countries.

To-day the question of competition is a world-wide one. The field is the world. It is a competition of markets, of countries, of nations, while the popular idea of competition is competition between individuals or between individual lines of railroad. The question is so large that it is, of course, very difficult to any more than indicate to you gentlemen the thoughts that have come to me in my study of this question. I have been interested in the study of transportation questions for many years. I have been an advocate of the regulation of railroads. I stood with Mr. Reagan in advocating the enactment of the interstate-commerce law and in the prohibition of pooling. We felt at that time that the combination of railroads was likely to result in excessive rates of freight, and that the prohibition of pooling was necessary to obviate that, although we both appreciated that the object of the interstate-commerce bill was chiefly to prohibit discriminations.

It took ten years to convince Mr. Reagan and myself that we had done the very thing that had increased the evil of unjust discriminations, because prohibiting the same right of contract between carriers which all other individuals and corporations enjoyed, it left it open for an unscrupulous minority to all the while overreach a majority who desired to enforce uniform rates of freight, and it greatly increased the evil of unjust discrimination.

Now, one defect in the Corliss bill, as it seems to me, is that it does provide for agreements between railroads; it may not be pooling agreements, but for the maintenance of associations which are absolutely necessary in the practical operations of railroads to insure uniform and stable rates, which are the great thing to be desired; not that there may not be excessive rates, but that there should not be a power above the railroads to say what is a reasonable rate. And I do not share the fear which Commissioner Prouty expressed here so eloquently the other day, that the great combinations, the community of interest idea, which has progressed so far, is likely to result in excessive rates of freight.

Our products are now being carried a thousand miles to the seaboard for less than the railroads of other countries charge for carrying those products inland from their seaboard. On the average, the rates of freight in this country are less than half those of other principal countries, and a very interesting diagram was prepared by the Philadelphia Museum that gives a graphic illustration, by the different lengths of line, showing the comparative rates of freight in the principal countries during the year 1897. That was the latest that they had the rate of freight of all the various countries. That was so interesting that the United States Export Association reproduced it, and I have a sufficient number of copies here so that if any of the members of the committee here are interested in that they can take one. That gives the ton mile rate upon the entire traffic of the various countries.

Touching this question of whether there is a danger of too high rates as discussed by Commissioner Prouty, and the large increase which has been made in rates during the last three years, I have given

a good deal of study to that question, and while I think there is room for criticism as to the method, the indirect method, by which rates have been advanced through the changes in classification, I do not see that the rates have been raised to even as high an extent as the cost of transportation, of all materials that enter into transportation, including labor, has advanced; and while our railroads have been making large profits because of the prosperous condition of the country and the enormous increase in the volume of business, it is certain that there will come lean years as well as fat years, that it is impossible for carriers to reduce their fixed expenses in proportion as the volume of business decreases in the lean years, and hence it is only fair, I think, viewed from both the standpoint of the shipper and the carrier, that no narrow view, based upon a few years or two or three years' results, should govern our conclusions.

There is one point which is not generally appreciated, and that is that it is a surplus which demoralizes markets, causes shutdowns of factories, and generally makes hard times. And the great problem seems to me to be to get rid of our surplus, both of our fields and of our factories, and hence I think that any power conferred—that is conferred, for instance, upon the Interstate Commerce Commission—to make rates which would prevent the giving of lower rates for export trade than are given for our domestic transportation would be unwise and against the interest of the country as a whole, and I believe that the present power of the Interstate Commerce Commission, in its power to investigate and declare a rate unreasonable, leaving it to the courts to decide what is a reasonable rate, is safer for the general public interest than it would be to confer a more sweeping and arbitrary power.

One feature of the Corliss bill, which throws the burden of proof, so to speak, upon the railroads in an appeal to the courts, it seems to me is going too far. I think that the shipper and the carrier should have equal access to the courts, and that the usual rule that the burden of proof is on the plaintiff is perhaps as just to the shipper as it is to the carrier.

Now, it has been alleged that the court delays in arriving at decisions, which seems subversive of justice, and that is sometimes no doubt true; but I think that the able lawyers on this committee can devise some way of expediting the decision of cases that are brought before the courts so that it would not result in a denial of justice.

One very interesting feature of the power already possessed by the Interstate Commerce Commission is shown in recent injunctions which have been granted by the courts against the continuance of discriminating rates of freight, and I hope that that will be found to be a source at the command of the Interstate Commerce Commission which will result in the uniformity of rates. I think that those injunctions ought to be made against shippers who seek preferential rates as well as carriers who grant them, and indeed the initiative, the pressure, for discriminating rates usually comes from the shipper—the large shipper. There is no doubt that the small shipper is very much at a disadvantage as compared with the large shipper, and that that is an evil which ought to be remedied.

The vote of the small shipper had as much to do with conferring the franchise under which a common carrier operates as the vote of a large shipper, and there is a principle involved there of the right of the

citizen on the public highway which goes far to modify the rule of wholesale and retail that governs to an unlimited extent in private transactions.

The thought of the world-wide competition, and that we are not in danger of excessive rates of freight, is one which seems to me to be most important and worthy of your consideration, perhaps, to a greater extent than these other birds-eye view remarks that I have been putting before you.

I have put together on paper some figures as regards the decrease in the rates of freight and the increases up to the time when these statistics were available, and also some figures as to the relative cost of labor and materials, and I do not wish to trespass upon the time of the committee to read them, but with your permission I will file a copy of this with the stenographer, and it may go into the proceedings.

The CHAIRMAN. Very well.

Mr. THURBER. I thank you, gentlemen, for the consideration you have given me. I happen to have some other business here in connection with some of the measures which have been introduced by the boards of trade, and so I have been backward and forward two or three times, and it is very kind of you to give me this time, because I have to go back to New York this afternoon.

Mr. CORLISS. I would like to ask you a few questions.

Mr. THURBER. Certainly.

Mr. CORLISS. You represent an export association?

Mr. THURBER. Yes, sir.

Mr. CORLISS. Organized under the laws of the State of New York?

Mr. THURBER. Yes, sir.

Mr. CORLISS. With a capitalization of \$5,000,000?

Mr. THURBER. Yes, sir.

Mr. CORLISS. You manufacture no products?

Mr. THURBER. No, sir.

Mr. CORLISS. You buy and sell no goods?

Mr. THURBER. No, sir.

Mr. CORLISS. That is all.

Mr. THURBER. I wish, however, to add just a word there. The United States Export Association was incorporated at the suggestion of one of its members that it ought to be incorporated, so that there would be no liability of its members over the amount of their membership dues.

Mr. STEWART. How large is your membership?

Mr. THURBER. We have 230 at the present time.

Mr. STEWART. Representing how many States?

Mr. THURBER. Thirty-four States, and representing the largest shippers in the United States, without exception.

Mr. STEWART. You say your views have changed in these past ten years with reference to the powers that ought to be given to the Interstate Commerce Commission?

Mr. THURBER. Yes, sir.

Mr. STEWART. When you advocated these powers, you were then a shipper, were you not?

Mr. THURBER. Yes, sir; and a large one.

Mr. STEWART. And then your views in reference to the railroads, etc., were different from what they are now since you ceased to be a shipper?

Mr. THURBER. Well, yes, sir; I think so. But that change of views has been very largely the result of study. I used to think that the transportation question was quite a simple one, and that a very few provisions in the law would remedy the whole situation; but as I grew in experience I grew in knowledge, and the great complexity of it and the difficulty of reaching all the various problems involved became more apparent to me.

Mr. STEWART. Are you a salaried officer of this export association?

Mr. THURBER. Yes, sir.

Mr. STEWART. And your duties are simply to supervise legislation?

Mr. THURBER. No, sir; not by any means. The United States Export Association business is to furnish to our members information.

Mr. STEWART. Information?

Mr. THURBER. For instance, credit information as regards the sending of foreign buyers.

Mr. STEWART. You are frequently at Albany, before the legislature of New York?

Mr. THURBER. I have been once at Albany.

Mr. STEWART. Representing this association?

Mr. THURBER. Yes, sir.

Mr. STEWART. You have also been in other States; you have been in New Jersey?

Mr. THURBER. No, sir.

Mr. STEWART. You have never been at Trenton?

Mr. THURBER. No, sir; never to the legislature at Trenton.

Mr. ADAMSON. It is purely an educational institution, is it?

Mr. THURBER. No, sir; it is purely a business institution.

Mr. ADAMSON. As a matter of fact, you never buy or sell anything. What do you do?

Mr. CORLISS. They disseminate information.

Mr. THURBER. We have 300 correspondents in foreign countries through whom we acquire credit information which we transmit to our members. We furnish our members with freight information, and take charge of their shipments when they are shipped through New York. We attend to their insurance and banking.

Mr. ADAMSON. Have you any expenses except your salary and your traveling expenses?

Mr. THURBER. Oh, yes, sir.

Mr. STEWART. Have you an office?

Mr. THURBER. We have.

Mr. STEWART. Where?

Mr. THURBER. No. 30 Broadway, New York. We employ 20 clerks.

Mr. STEWART. Is that the Thurber Building?

Mr. THURBER. No, sir; it is the Gherkin Building.

Mr. ADAMSON. If you have no capital stock and no business, I do not see how your members could be liable—

Mr. STEWART. Where do you get your money to pay your clerks?

Mr. THURBER. We have \$100 a year from each member, for which they get this service. We publish also a bulletin for foreign circulation in four languages, which circulates to 20,000 foreign buyers in all parts of the world.

Mr. STEWART. What do you charge for that service?

Mr. THURBER. Nothing at all.

Mr. STEWART. You do not charge anything to the foreign correspondents?

Mr. THURBER. No, sir; the foreign correspondents furnish us information, and we, in turn, furnish our foreign correspondents with this information they may require in the United States. We have, you might say, a foreign mercantile agency on a small scale. We have accumulated information in our records so that we can answer about one-half of the credit inquiries we get from our books alone. The other answers to inquiries we get by correspondence or by cabling, as the case may be, and that is an important department.

Mr. STEWART. Do you furnish secret information of the standing of merchants?

Mr. THURBER. Yes, sir; that is a part of our business.

Mr. STEWART. You are paid for that?

Mr. THURBER. No, sir; that is a part of the privileges of our membership.

Mr. STEWART. Outside of your clerks do you have a system of espionage by detectives, or how do you get at the standing of a firm?

Mr. THURBER. You are probably familiar with the system of mercantile agents.

Mr. STEWART. You mean Bradstreet's?

Mr. THURBER. Yes, sir.

Mr. STEWART. Yes.

Mr. THURBER. It is on that principle.

Mr. STEWART. Do you have agents in those States——

Mr. THURBER. We have 310 or 315 foreign correspondents in all parts of the world. You see the credit information which our members require is on the standing of foreign buyers, and in many cases our correspondents in other countries want information as to the standing of people in this country. We make reciprocal arrangements to interchange that information.

Mr. STEWART. You have annual meetings?

Mr. THURBER. We have had monthly meetings, usually, and we have had two annual meetings only.

Mr. STEWART. What is the average attendance at those meetings?

Mr. THURBER. You mean at the monthly meetings or the annual meetings?

Mr. STEWART. At the annual meetings.

Mr. ADAMSON. At both.

Mr. THURBER. Sometimes at the monthly meetings it is only the board of directors.

Mr. STEWART. How do you arrive at the views upon this particular question which you have been expressing of the members distributed through thirty States?

Mr. THURBER. We are in constant communication——

Mr. STEWART. Can you produce any correspondence with your membership throughout these 34 States which gives you a standing before this committee as representing them?

Mr. THURBER. I can.

Mr. STEWART. Have you that correspondence with you?

Mr. THURBER. No.

Mr. STEWART. Can you produce that correspondence?

Mr. THURBER. Yes, sir; and if you wish an expression of the individual views of the members it will be a very easy thing to get it.



Mr. STEWART. You say you have them in your archives?

Mr. THURBER. We have in this respect, that we are in constant contact and communication with them, and I know their views, and I am voicing their interests.

Mr. STEWART. Will you produce any minutes of your association authorizing you to appear here and represent them before this committee?

Mr. THURBER. Yes, sir.

Mr. STEWART. I wish you would do so.

Mr. THURBER. I will.

Mr. CORLISS. Mr. Thurber has said that the members of this corporation thought it necessary to incorporate, that it was the object of the corporation to avoid liability——

Mr. THURBER. The object of the incorporation; yes, sir.

Mr. CORLISS. Is the business such as to make a man liable——

Mr. THURBER. Any voluntary association is subject to the unlimited liability of its members unless it is limited by an incorporation.

Mr. CORLISS. You are, then, doing something that might create liability if it was done by an individual, and that you seek to remedy by the organization of this corporation?

Mr. THURBER. Yes, sir. Suppose that I, as president of the association, were to go and make contracts binding the association, and that it was not incorporated with a limited liability, every member would be individually liable.

Mr. MANN. The liabilities being just.

Mr. THURBER. A man making a contract with you would be limited to \$500 in his recovery. The liability of the members is limited to their membership dues.

Mr. STEWART. Under what laws are you incorporated?

Mr. THURBER. The laws of New York.

Mr. STEWART. Under what particular incorporation law?

Mr. THURBER. Our general incorporation law.

Mr. STEWART. What powers have you to do business?

Mr. THURBER. General business powers, not the banking power.

Mr. STEWART. Have you resolutions and by-laws?

Mr. THURBER. Yes, sir; a constitution and by-laws.

Mr. MANN. Without an incorporation your members would be only liable for just claims?

Mr. THURBER. Yes, sir.

Mr. MANN. But under your incorporation you are not liable for just claims——

Mr. THURBER. You are now speaking of the association; but taking the individual membership, they are liable to the extent of their membership dues, which is \$100 a year.

Mr. MANN. Practically nobody who had a just claim against you could recover it?

Mr. THURBER. We do not have any liabilities.

Mr. MANN. You might have.

Mr. THURBER. Our membership dues pay our liabilities.

**ADDITIONAL STATEMENT OF F. B. THURBER, PRESIDENT OF  
THE UNITED STATES EXPORT ASSOCIATION.**

Mr. Chairman and gentlemen of the committee, I appear before you in behalf of the United States Export Association, of which I am president, and which is a union of American interests for the purpose of widening the markets for American products, and whose membership comprises leading houses in the principal lines of industry situated in thirty-four States. It does not, therefore, represent any special interest, or any special port or section, but the interests of the country as a whole.

I have been studying the Corliss bill (H. R. 8337), with the result of concluding that while much in it is good, in its present form it is inexpedient, for the reason that it proposes the wrong remedy for the disease. Section 2 proposes to confer the rate-making power upon the Interstate Commerce Commission when the rate-making power has nothing whatever to do with the prevention of unjust discriminations. In so far as this bill strengthens the hands of the Interstate Commerce Commission to investigate and expose unjust discriminations it is likely to be beneficial, but in so far as it confers upon the Commission the power to make rates and classifications it is likely to be injurious alike to shippers and carriers, because, in the first place, it will prevent the passage of any bill amending the interstate-commerce law, and if the proposed bill could be passed, conferring the rate-making power on the Interstate Commerce Commission, it would not prevent the evasions of it which constitute unjust discriminations.

The only thing which will prevent this is to give carriers the same right of contract which is enjoyed by all other corporations and individuals, the right to legally enforce their agreements upon each other, a right which is denied to carriers at the present time by the prohibition of pooling in the interstate-commerce law, and the interpretation which has been given by the Supreme Court of the United States to the antitrust act in the joint traffic and trans-Missouri decisions, pronouncing all associations for the maintenance of rates illegal, the direct result of which has been to promote the "community of interest" consolidations, a process which has already progressed so far that close observers are in doubt as to whether or not the master spirits in these consolidations would not prefer to see the present conditions of chaos maintained in order that these consolidations may be fostered. As chairman of the committee on railroad transportation of the New York Board of Trade and Transportation, and of the National Board of Trade, as well as member of the committee on internal trade of the New York Chamber of Commerce, I have been a close student of this question for 25 years from a shipper's point of view. I have had perhaps as much to do with legislation regulating the relations of shippers and carriers as any other individual. I advocated the New York railroad commission and the enactment of the interstate-commerce law, and cooperated with Mr. Reagan, the father of the bill, in prohibiting pooling. We feared that with the right to pool carriers might charge the public exorbitant rates for freight, but the experience of fifteen years has shown that there is no danger of high rates in this country; that the chief danger is in unjust discriminations, which always operate to the benefit of the few instead of the many; to the advantage of the large instead of the small shipper.

So far as the rate-making power is concerned, it was not intended by Congress to confer that power on the Interstate Commerce Commission. This is shown by the following extracts from the debates in Congress while the interstate-commerce bill was pending.

In the House of Representatives, on December 8, 1884, Mr. Findlay said:

It is perfectly legitimate to prescribe that a rate shall be reasonable and then leave it to the courts to determine what is and what is not reasonable, but to declare in advance, not merely the principle by which the fixing of the rate shall be governed, but to prescribe the rate itself by referring it to a fixed standard and apply the rule to the complicated system of interstate transportation, with all of its vast ramifications and subtle competitions, is the exercise of a power which, if it be held legislative in its nature, certainly ought to be sparingly and cautiously used. The bill of the committee keeps this distinction full in view in all of its provisions, and is consistent and symmetrical throughout; but the Reagan substitute, as I have shown, is not only not distinguished by this unity and integrity of purpose, but is complex and contradictory in some of its essential features.

MR. REAGAN. But it would be understood from his reasoning that my bill not only requires rates to be reasonable, but fixes the rates. There is not a word in the bill having that effect.

On January 7, 1885, Mr. Reagan said:

One of the greatest troubles I have had, even with the friends of legislation in this direction, has been to get them to understand that this is not a bill to regulate freight rates; that it does not undertake to prescribe rates for the transportation of freight. I know the difficulties which would attend any measure attempting to prescribe rates of freight. I am persuaded that no law fixing rates of freight could be made to work with justice either to the railroads or to the public, and I have intended from the beginning to avoid that difficulty.

The difficulty with gentlemen in considering the bill is that they can not keep out of their minds the arguments of the railroad lawyers and lobbyists who are continually harping upon it, that this bill establishes arbitrary rates of freight. It does no such thing. It carefully guards against that, simply intending to prevent the most manifest abuse against the public, and control the monopoly powers of these corporations.

In the Senate, May 6, 1886:

MR. KENNA. What constitutes a reasonable rate is precisely the thing which the people of this country are unwilling to leave to the arbitrary discretion of the Railroad Commission.

As regards reasonable rates as a whole the people of the United States have no cause to complain. They have steadily declined until even with the recent advance they are less than half those of other principal nations. Our railroads carry our products 1,000 miles to our seaboard for less than those of other countries charge for carrying the same products 200 miles inland from their seaboard. The steady decline in rates is illustrated by the following figures:

The average rate for 1 ton of freight 1 mile since 1892 has been as follows:

	Mills.
1900 .....	7. 29
1899 .....	7. 24
1898 .....	7. 53
1897 .....	7. 98
1896 .....	8. 06
1895 .....	8. 39
1894 .....	8. 00
1893 .....	8. 78
1892 .....	8. 98

The rate was probably still higher in 1901; but everything else has risen.

These results have been largely attained by subsidies in land, money, and mail pay, and giving freedom of action in combining and consolidating, thereby attaining the highest economies of operation. If we had pursued the same course on the sea as we have on land we would now have a merchant marine which would give us permanent low rates on the sea and enable us to put our heavy products of the field, forest, mine, and factory into all the markets of the earth, and our finished products would closely follow.

I am unwilling to take any steps that will hamper such development, for in this age of steam, electricity, and machinery "the field is the world" in commerce as with religion; and with our command of these forces, brought to bear upon our great natural resources, with intelligent and liberal statesmanship, we will lead the world in the march for commercial supremacy.

It is alleged by some that rates for railroad transportation during the last two years have been unduly increased by means of changes in classification, rules, etc. While opinions may differ as to the methods by which rates have been increased, there can be no doubt but that railroads were obliged to advance their rates on account of the large advance in the price of labor and materials. What these have been is perhaps indicated by the following figures: The price of steel rails in 1898 was \$19 per ton; the present price is \$28. The price of yellow pine lumber, used in the construction of freight cars, in 1898 was \$15.75 per 1,000 feet; the present price is \$20. The price of axles in 1898 was 2 cents per pound; the present price is 3 cents. Car wheels in 1898 were \$6.25; the present price is \$7.25. Bar iron in 1898 was \$1.10 per 100 pounds; the present price is \$1.60 per 100 pounds. Steel required in the construction of locomotives in 1898 was \$1.50 per 100 pounds; the present price is \$2.25 per 100 pounds. Railroad labor upon the average was advanced 15 per cent during the last two years, while the ton-mile rate of freight on all the railroads of the United States has not been advanced more than 8 to 10 per cent. Of course, the increased volume of business has yielded increased profit as a whole, but much of it has gone into permanent improvements and increased equipment, which when the lean years come will be unremunerative. It will be conceded by fair-minded men that our railroads are entitled to share in the general prosperity of the country, in which they are so large a factor. Both shippers and carriers are apt to see only their own side of the question, and no just conclusion can be arrived at which does not take into consideration both sides.

I believe that a majority of both shippers and carriers are honestly desirous of doing what is fair and right in their relations with each other, but there is an unscrupulous minority in both who are constantly overreaching to get an unfair advantage of the other. On a single railroad in the month of November last over 50,000 instances of fraud on the part of shippers in billing goods were detected by the inspection bureau of that company in order to get a lower classification than the goods were entitled to, and the chief inspector estimated that 97 per cent of these were willful frauds, and only 3 per cent were attributable to honest error on the part of shippers. The system of organized fraud on the part of ticket scalpers is familiar to all students of transportation questions. There was probably never a head of stock killed or an injury to property that the claim for damages was

not excessive. In view of such facts as these we can not wonder that railroad officials are just a little skeptical of the human nature embodied in the average shipper or citizen.

In conclusion, Mr. Chairman and gentlemen, I would call attention to the fact that the most successful railroad commissions have been those of Massachusetts and New York, neither of which have had the power to prescribe rates, but which have had full powers to investigate and bring abuses to the attention of the courts and public opinion. These have been found sufficient to remedy the evils which existed in their jurisdictions, and I hope that you will not approve this bill unless amended so as to preserve the right alike of carriers and shippers to appeals to the courts without prejudice, and to provide the right to make reasonable pooling and other agreements between carriers, for the maintenance of uniform and stable rates, subject to the approval of the Interstate Commerce Commission. In this way only can the evil of unjust discrimination be eliminated.

From my study of this question, I have become convinced that there is no danger of even the largest combinations imposing upon the public unreasonable rates of freight. It will not eliminate competition, for this principle is all-prevailing. The popular conception of competition is competition between individual shippers and individual railroad lines, but the larger working of the principle is embodied in the competition of markets—the competition of towns, cities, sections, and countries. If all the railroads of the United States were combined into a single corporation or the Government itself, this force would still be active. Every road would be developing the industries along its line, and these industries would compete with similar industries along other lines, even though ownership of all the lines was unified. Another factor in the field of competition is water transportation, embodied in our lakes, rivers, canals, and the ocean, which surrounds our country on all sides. There is no fear whatever of excessive rates for transportation in this country. The only fear is as to unjust discriminations, and these can be remedied by full powers of investigation, by supervision of railroad commissions with power on the part of both shippers and carriers to appeal to the courts, and giving carriers the same right of contract which all other individuals and corporations enjoy except railroad companies, which are debarred from this right by the prohibition of pooling in the interstate-commerce act and the interpretation of the Sherman antitrust act given by the Supreme Court of the United States in the Trans-Missouri and Joint Traffic Association cases.

I am familiar with the agitation which is seeking to confer increased powers upon the Interstate Commerce Commission embodied in the Corliss bill (H. R. 8337) and the Nelson bill (S. 3575). It began by a bankrupt line, leading from Kansas City to Gulf ports, making abnormally low rates on export wheat. To meet this the east and west trunk lines made equally low rates on wheat but not on flour, because they were not exposed to the same competition in carrying the products of the widely-scattered mills of the Middle West to the seaboard, and hence export flour was charged a much higher rate than export wheat. This great discrimination against American millers in favor of European millers led to an agitation for lower rates on flour. Members of the Interstate Commerce Commission endeavored to utilize this well-founded dissatisfaction to get the rate-making power. A preliminary meeting was held at Chicago, followed by a

convention of shippers representing various interests, held at St. Louis, November 20, 1900, at which the Cullom bill (S. 1439) was indorsed, which was substantially the foundation for the present Corliss and Nelson bills. There is a diversity of opinion, both among shippers and carriers, as to the necessity for any legislation in the direction of increasing the powers of the Interstate Commerce Commission.

Spurred by some criticisms to the effect that the Commission was not using the powers at its disposal, it has recently invoked the power of the courts to prohibit unjust discriminations by injunctions, and it is too soon yet to say just what effect the injunctions which have been granted will ultimately have, but thus far they have been beneficial, and it seems to me that if made applicable to shippers as well as carriers the probability of their being a permanent remedy for the evils of unjust discrimination would be increased. Railroads do not willingly make unjust discriminations. The initiative is always with the shippers, and railroad agents yield to pressure brought to bear upon them by shippers controlling large amounts of business. In closing, Mr. Chairman and gentlemen of the committee, I wish to repeat that I believe that in the face of the basic fact that the present system of elasticity in American railroad management has resulted in giving our great country lower rates by one-half for the transportation of freight than any other principal nation enjoys, and that this affords an outlet to the markets of the world for the great volume of our surplus products, we should go slow in imposing cast-iron rules and regulations in an intricate and complex business like that of transportation. It may seem unjust to a merchant on our seaboard that he should be charged a higher rate in proportion than the same freight destined for export, or that freight originating on the seaboard should be charged a higher rate than freight from foreign countries destined for an interior city in our own country pays.

It may seem unjust to a local shipper doing business within his own State that his local rate should be so much higher than interstate rates, but if a producer or manufacturer can get a contract at a distant point through the means of a reduced rate of freight, the carrier, having perhaps empty cars going in that direction, can afford a concession rather than let its rolling stock go empty. Labor and capital are both benefited by a reasonable elasticity which permits of such concessions being made, and, after all, it comes down to a question of what is reasonable, and of this there is perhaps no better authority than the courts, notwithstanding that delays sometimes may result in a substantial denial of justice. Such instances are the exception rather than the rule, however, and you gentlemen, who represent all sections of our great country, after hearing all sides, must make up your minds as to what is reasonable, but I hope, if there is any amendment to the interstate-commerce law, that it will be in the direction of strengthening the provisions for investigation and publicity, conferring the right of contract upon carriers, subject to the approval of the Interstate Commerce Commission, and giving equal right of appeal to the courts of both shippers and carriers, but not conferring the authority upon the Commission to make rates or classifications.

**STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN OF THE  
UNITED STATES INTERSTATE COMMERCE COMMISSION—  
Continued.**

Mr. KNAPP. Mr. Chairman and gentlemen, before proceeding with my argument I desire to make a word of comment upon some of the observations made by my esteemed friend, Mr. Thurber.

Inferences drawn from the average rate per ton per mile on all traffic are liable to be very misleading. It is frequently said that railway rates in the United States are not half what they are in England. That is true only when you compare the average rate per ton per mile on all traffic of the one country with the same average in the other country. Allow me briefly to explain to you how the average rate per ton per mile may be greatly reduced without any change at all in the rates as to any particular shipment.

Now the relative amount of low-grade freight carried in this country, like ore, coal, etc., has enormously increased in the last fifteen years. If in one year you carry a thousand tons of first-grade freight at \$1, and another thousand tons of sixth-class freight at 20 cents, the average rate will be 60 cents. But if in the next year you carry a thousand tons of first-class freight at a dollar, and 10,000 tons of sixth class at 20 cents, the average rate on all the traffic will be more than cut in two without any change in the rates themselves. Now the enormous reduction in the average rate per ton per mile in this country has come from three principal causes. First and mainly, the enormous increase in the relative amount, the relative tonnage, of these low-grade articles which are carried at a low price; second, there has been from the beginning a difference between carload and less than carload rates, and in the last fifteen years there has been an enormous increase of the relative proportion of the traffic carried in carloads and at carload rates, so that without any change in the rates themselves, without reducing the cost of shipping a carload or 100 pounds, you may have an average reduction in the average rate per ton per mile on all traffic. There have been reductions in grain to some extent, in iron articles, and in other commodities, which I will not stop to mention, which have entered into the reduction of the average.

When you speak of English rates, you must remember that their rates include cartage at both ends. An English carrier goes to the warehouse and gets the stuff and transports it to the railroad, and when it arrives at its destination he gets it and transports it to the place of the customer. Of course, that enters into the rate. Now, I ask Mr. Thurber to bear in mind that England is a small country, and that it is seldom that traffic moves more than 500 miles there, and taking into account the cartage, I ask him to compare what it costs a man in New York to deliver dry goods, boots and shoes, or merchandise of any class, the articles in which the great mass of people are interested—how much it costs him to effect the movement from his store to the store of the customer as compared to the cost of moving the same articles the same distance in England, and I think that he will be very much surprised. It is not so very much lower than it is there.

Mr. THURBER. How is it with other countries?

Mr. KNAPP. There is no country that is as low as the United States. Now, there is another thing that is to be taken into account. It is a well-known thing in railway transportation, and water transportation,

too, for that matter, that the cost per unit of traffic moved diminishes with the distance it is carried. You do not get twice as much for carrying a carload 1,000 miles as for carrying it 500 miles. Our traffic is carried long distances, because we have a great big country, and much of it moves 2,000 and even 3,000 miles, while in England there is but little movement that exceeds 500 miles, so that my suggestion is that you compare the ordinary cost of moving the ordinary merchandise, the articles in which the mass of the people are interested, the same distance for the same service, and you will find that it is not anything like twice as great in England as it is in the United States. The truth is, gentlemen, that in the official territory, that is the territory north of the Ohio and the Potomac rivers and east of the Mississippi, the most populous and wealthy part of the United States, producing the greatest volume of traffic, the basis in making rates in all that territory is the Chicago rate. Places nearer New York take a percentage under the Chicago rates, and places farther than Chicago take a percentage over the Chicago rate, so that when the basis of New York and Chicago is reduced there is a corresponding reduction in all that territory.

Now, the class rates in all that territory on the six classes are just as high to-day as they were fifteen years ago, and in numerous instances the actual rates applied have been increased by the fact that articles have been advanced in their classifications to take a higher rate. Gentlemen, I did not mean to go into that. I just wanted to call your attention, however, to the fact that we may be very much misled when our attention is called to the extremely low average rate per ton per mile on all traffic. Why, the Chesapeake and Ohio Railroad shows the lowest average rate per ton per mile on all its traffic of any railroad in the United States, and yet everyone knows that the actual rates applied to merchandise, applied to the articles that the people living along the line of that road are interested in, are very much higher than they are along the New York Central or along the Pennsylvania Railroad, simply because 90 per cent of the traffic of the Chesapeake and Ohio is coal and ore, and that is of course carried from the summit where it is produced both ways to tide water, and of course that results in a very low average rate per ton per mile on all articles on that road, and yet it costs more to haul a carload of boots and shoes or clothing or any of the articles of domestic use over that road than it does over the New York Central.

In order that I may not forget it, I want to make another observation now. If I understand the measures which are pending before this committee, and I have endeavored to examine them with care, there is not a single one of them which proposes to change the present state of the law in respect to allowing a rate on exports lower than on domestic traffic; not a syllable.

Mr. THURBER. It proposes to give the power to the Commission, which they do not now have, and that might enable the Commission to decide that the contention of our local New York merchants, that they should pay no higher than the proportionate rate on export goods—than the people who export—might be sustained.

Mr. KNAPP. Let me see. I might as well strike out that question right here now. I want you to bear this in mind, that this Commission, under the Corliss bill even, can make no order except an order justified by the sworn testimony before it; and if, in a proceeding



where all parties have an opportunity to be heard, the facts are produced and the testimony is presented which warrants and justifies a conclusion that that relation between domestic and export rates is wrong, then it ought to be changed. Now, I am not saying for a moment, gentlemen, that domestic traffic should always be carried at the same rate as export traffic. I think conditions arise in this country, have arisen, and are likely to arise again, when it is an economic advantage, to say nothing about a commercial benefit to the people of this country, to permit these surplus products to be carried abroad at rates for the land carriage to the seaport which are less than the rail carriers should be obliged to accept on domestic transportation.

Mr. ADAMSON. An instance was cited the other day where a shipper had billed on an export bill of lading, and then had stopped cotton, I believe it was, in New York, thus enabling him to sell cotton cheaper there. You would not permit any such thing as that, I suppose?

Mr. KNAPP. I do not think that such a practice as that can find a defender or an apologist in the United States. I think to allow such a practice as that is disgraceful.

Mr. ADAMSON. If you bill on a bill of lading it should be in good faith?

Mr. KNAPP. Certainly; in good faith. Now, there are some other remarks made by Mr. Thurber which I prefer to comment upon in their proper connection as I proceed.

Gentlemen, I have already said all I care to say respecting those proposed amendments to the law which aim to give greater efficiency to the criminal remedies provided for its enforcement. My position is simply this: A right to the common highway, the right to use it on equal terms with everybody else, is a right that existed long before any written constitutions were adopted. That is a right founded in the very constitution of human society. It belongs to that class of rights which the Declaration of Independence described as inalienable; and that right is exactly the same, gentlemen, whether the highway is made of dirt or of steel. And I do not for one moment assent to any suggestion that laws should encourage or permit a public service to be performed for one man cheaper than it is for another; and speaking from my observation, and such crude reflections as have resulted—

Mr. ADAMSON. I do not think anybody has made such a suggestion as that.

Mr. KNAPP. Some questions were asked the other day on that line.

Mr. ADAMSON. Those questions were on an entirely different position.

Mr. KNAPP. That you might allow shippers to get a secret and preferential rate if they could.

Mr. COOMBS. Who made those statements?

Mr. KNAPP. They were implied in some questions which were asked.

Mr. COOMBS. I asked some questions in regard to that, but I desire to say that I did not intend to imply anything by those questions. I thought I had a right to ask them to get all the light that I could.

Mr. ADAMSON. Nobody has ever disputed your presumption as to the right of the Government to control the highways. I asked you some questions about the right of the Federal Government to regulate the commerce between the States, and I could not understand your discrimination between regulating different kinds of commerce, private as well as public.

Mr. KNAPP. I venture to say that I said that the best answer I could make was to refer you to the Supreme Court of the United States.

Mr. ADAMSON. Referring me to the Supreme Court does not answer my question.

Mr. KNAPP. It would be idle for me to make an answer inconsistent with the law of the land laid down by the highest judicial authority.

Mr. ADAMSON. I did not ask you about law at all. I simply asked you where you claimed to get your authority.

Mr. KNAPP. Of course, the authority to make any provision in the line of these bills is found in the commerce law of the Constitution.

Mr. ADAMSON. We are legislating every day about private commerce as well as public—private tradesmen and individuals engaged in interstate commerce.

Mr. KNAPP. So far as the subject of legislation is interstate commerce there is no question about the right to legislate.

Mr. ADAMSON. That has nothing to do with it at all.

Mr. KNAPP. The question is whether this is interstate commerce or not.

Mr. ADAMSON. You touch no corporation except in interstate commerce, no railroad except in interstate commerce; so there is no discrimination in your authority at all as to whether it is a corporation, a public carrier, or a private citizen, or who it is, so long as he or it is engaged in interstate commerce.

Mr. KNAPP. So long as it is interstate commerce it does not matter whether it is an individual, or a corporation, or a partnership, of course.

Now, not to take too much time, I feel that I am abusing your patience, and I can only say that I regard it not only as an act of justice, but of probably great value, to so change the tenth section as to make the corporation carrier, and I do not know of anyone who makes a serious objection, or any objection at all, to that proposition. And I say that if the shipper is to be made liable at all, then it should be under circumstances and a rule of law which makes it practical to bring the shipper to justice when he violates it. If, in your wisdom, you think this law will be more efficiently enforced by leaving the shipper out altogether and putting the penalties solely on the carrier, I am not disposed to argue against that proposition.

The CHAIRMAN. But your judgment would be against that?

Mr. KNAPP. It would be against it, Mr. Chairman. While I can see that as a matter of practical administration there would be advantages in having the shipper innocent, so that he could be called as a witness and he could be required to testify without pleading any constitutional privilege, because he is not himself an offender, still, after all, gentlemen, after all, I must express my honest conviction to be that the shipper ought to be liable as well as the carrier, first, because I think that is necessary to satisfy the fair-minded sense of justice.

The CHAIRMAN. In cases where he would be liable, you think there should be an exemption from punishment when he is called upon to testify, so as to compel him to testify?

Mr. KNAPP. Yes, sir; that is provided so now. You do not need to legislate on that subject. It is no longer, under existing conditions, the occasional, the infrequent shipper, who gets a rebate. It takes a very powerful shipper or combination of shippers to get a preferential rate. Therefore, when these secret arrangements are made, when

these private concessions actually occur, they occur under such circumstances and in favor of such men as to indicate a degree of moral turpitude on the part of the shipper fully equal to that of the carrier. They are under equal moral responsibility, and they are certainly equally deserving of the opprobrium which attaches to the violation of the law and to the punishment which results from that violation.

Now, just a few moments on the other question. Let us see exactly where we are to-day. Under the law as it stands the Commission has full authority to receive complaints. It may serve those complaints upon the carrier complained of and require it to answer. The law needs no alteration in that regard. The jurisdiction of the subject-matter is as broad and ample as the case requires. And the important question right here is this, it is in very narrow compass, and very easily stated, and it is a question which appeals to you with far greater gravity than it does to me. It is just this: When a formal complaint is made in the manner which the law now provides, that a given rate is excessive, or that its enforcement upon everybody effects a discrimination against one locality and in favor of another, or against one and in favor of another, and the carrier complained of answers that allegation, and the Commission then, proceeding with all the formality of a judicial inquiry, takes all the testimony which either side has to offer bearing on that question, what order, justified by that disclosure of sworn facts, what order shall the Commission be authorized to make?

That is all there is of it. At present the Commission can make simply an order, if the facts warrant, condemning the rate relation complained of, and requiring the carrier to cease and desist from continuing that rate, or rate relation, and that is all the order the Commission can make. I am speaking now, bear in mind, simply of the authority of the Commission.

Now, gentlemen, if you are content to leave the Commission with only that degree of authority, the discussion ends at this point.

Mr. CORLISS. It is not binding on the carrier, after the order is made?

Mr. KNAPP. No, sir; that is another question. The question now is only in such a case as this, bear in mind; the jurisdiction to make an order is dependent upon the jurisdictional facts which are contemplated by the measure: There must be a complaint, there must be an answer, there must be full hearing, and the order can be only such as can be justified by those facts. Now, what order shall the Commission have authority to make? That is all.

Mr. Thurber spoke about an arbitrary order. The Commission can make no arbitrary order, it can simply decide what the truth is and what ought to be done in view of the state of facts actually disclosed. Now, if you are satisfied—if you think under existing conditions, with practically no railway competition, that the authority of the Commission shall be limited to a mere condemnation of the thing complained of, and that it shall have no authority to say what thing shall be done in the future in place of the one condemned, then the question is ended. The responsibility is upon you. The country perfectly understands what the Commission can do and what it can not do.

If you do not want it to do any more than it can do now, then the law should not be changed in this regard.

Mr. DAVIS. Have there been numerous instances in which the railroads have declined to make future rates upon your findings since the

Supreme Court decision—where they have ignored findings or decisions, or whatever they may be called?

Mr. KNAPP. Oh, yes, sir. "Numerous," of course, is an uncertain term; but there are frequent instances of that kind.

Mr. DAVIS. Have there been many instances in which the railroads have fixed their rates for the future on what you have found to be just rates?

Mr. KNAPP. Some instances of that kind. As I have already explained, for ten years, or until the Supreme Court decided otherwise, the Commission acted upon the theory that in such a case it could name the thing to be done in the future. And it was not until January, 1897, or perhaps later, that the Supreme Court of the United States decided that, under the law as it now stands, the Commission had no authority to do that.

Since that interpretation has been made, and under circumstances which completely cover the question, the Commission, of course, has made no order except an order to cease and desist from the thing complained of.

The CHAIRMAN. Has the Commission made any recommendations accompanying those orders?

Mr. KNAPP. Yes, sir; I was about to say that. The Commission, without any authority to do so in the statute, have undertaken in such cases to express their judgment as to the thing which the carrier ought to do. But, of course, the order that it makes goes no further than to—

The CHAIRMAN. What is the history of the matter with reference to obedience to that suggestion?

Mr. KNAPP. It is exactly what happens, and what will happen. In several cases, decided since that time, the carriers have, with reasonable promptness, made changes in their tariffs so as to make them conform to the recommendations of the Commission. In other cases they have simply ignored the order and done nothing.

Of course you gentlemen understand that in the present state of the law, and the authority of the Commission merely such as I have described, the carrier could effect a technical compliance with that order by making only a nominal change in the rate under consideration, and then the whole thing would come to naught.

Mr. MANN. Under the present law, you have authority to order them to cease and desist from charging such a rate. That is effective for a future offense?

Mr. KNAPP. Yes, sir; we assume that it is.

Mr. MANN. I say assume under the present law—

Mr. KNAPP. I do not doubt it.

Mr. MANN. What has been the fact where you have made an order of that kind; what has the railroad company actually done?

Mr. KNAPP. Well, I say, in all such cases, we have included in the report of the case a recommendation; that is, unless we have found for the carrier, as often happens; that is, not sustained the complaint. And in every case the carriers have either adopted the recommendation and changed their tariff accordingly or they have done nothing.

Mr. MANN. You mean they have failed to carry out your order and to cease and desist?

Mr. KNAPP. Yes, sir.

Mr. MANN. You have a power to file a proceeding in court to compel them to obey that order?

Mr. KNAPP. Yes, sir.

Mr. MANN. Have you done that?

Mr. KNAPP. Yes, sir; we have several cases in court now.

Mr. MANN. Some of those cases have gone into court and are now pending; have any of them been disposed of?

Mr. KNAPP. No case, I think, has been decided.

Mr. MANN. What I wanted to get at is whether, in fact, the railroad companies have adopted this policy, which of course they could do; if, for instance, you decide that the rate of one dollar is reasonable, and you order them to cease and desist from charging a dollar in the future, I want to know whether they thereupon obey that order and the next day make a rate of 99½ cents.

Mr. KNAPP. No, Mr. Mann; no railroad would be as stupid as that.

Mr. MANN. You said they could—

Mr. KNAPP. Yes, sir; they could do that.

Mr. MANN. I want to know whether they do.

Mr. KNAPP. No, sir; let me explain to you why.

Mr. MANN. That is a very practical matter, and one of considerable interest.

Mr. KNAPP. Surely a very practical matter. Now, of course, the Commission can not enforce its own order. We have been talking about the order that the Commission can make. The effect of that order when it is made, how it shall be enforced, is another question, but under the existing law, as you doubtless understand, the carrier is under no legal compulsion to take any action when the order of the commission passes against it. It can wait, and does wait, until in accordance with the proceedings or procedure under certain laws, a bill is filed by the circuit court to enforce the order.

Take a concrete case. Suppose that a board of trade representing a community complains of a rate, which is \$1, and the complaint is served upon the carrier, and the complaint is heard.

The Commission reaches a conclusion that a dollar rate is unreasonably high, and thereby violates the first section of the law, which requires that rates shall be just and reasonable. It therefore makes an order that the carrier shall cease and desist from charging a dollar. That is all the order to make. Now, of course, if the carrier is disposed to make some concession or to adopt the recommendation which the Commission may have made in its report it does that. If it is disposed to adhere to its position and defend this rate, of course it does nothing. And the reason why the carrier will not make a nominal change in the rate in order to technically comply with the order of the Commission is simply this: The carrier will wait until the bill is filed to enforce the order, which is simply an order to cease and desist, and the carrier will then try the case out in the circuit court, and then it may appeal to the circuit court of appeals, and then to the Supreme Court of the United States.

And if finally the court of last resort sustains the decision of the Commission, which was simply to cease and desist from charging a dollar, then the carrier can reduce its rate to 99½ cents, and thereby comply not only with the order of the Commission but with the order of the Supreme Court of the United States as well.

Mr. MANN. That is what the law permits them to do. But what, as a matter of fact, have they done?

Mr. KNAPP. They have either done nothing, and awaited the suit——

Mr. MANN. Have you had suits of that sort commenced?

Mr. KNAPP. I think in every case, after a reasonable delay, a suit has been brought, and those suits are now pending.

Mr. MANN. Have any of those suits been disposed of?

Mr. KNAPP. I am quite confident that no suit has been decided. There are a number pending.

Mr. CLEMENTS. None by the Supreme Court.

Mr. COOMBS. By the circuit court of appeals?

Mr. KNAPP. They have been pushed. I am speaking now, as Mr. Clements suggests, of the cases in the Supreme Court. None have been decided by the Supreme Court.

Mr. MANN. Has any case been disposed of by the court of last resort?

Mr. KNAPP. There has been no case which was commenced since the Supreme Court decided that we could only order the carrier to cease and desist, which has been disposed of by the Supreme Court.

Mr. MANN. It may not have been appealed to the Supreme Court. Has any final order been passed——

Mr. KNAPP. Yes, sir; and sustained by the circuit court of appeals.

Mr. MANN. And not appealed to the Supreme Court of the United States?

Mr. KNAPP. No, sir; in no case has the litigation been entirely finished.

Mr. MANN. How long ago was that decision rendered?

Mr. KNAPP. In 1897.

Mr. MANN. How many cases have you now pending?

Mr. KNAPP. I do not know quite the number.

Mr. MANN. Do you report all the cases in your last report? There are only about two dozen there.

Mr. KNAPP. Yes, sir.

Mr. MANN. In the last annual report, just issued?

Mr. KNAPP. I suppose there are six or eight pending.

Mr. MANN. Are all those cases pending in which you have had occasion to find that the rate was unreasonable and to order a railroad company to cease and desist from charging it in the future?

Mr. KNAPP. With this difference—that there would sometimes be a group of cases, or a number involving the same question, and then, of course, to save expense, only one suit would be brought and the other matters would stand in abeyance awaiting the decision of the question which controlled them all.

Mr. MANN. It is impossible to tell, then, what the operation of the law would be if the Supreme Court passed upon these questions—this question which you decided and ordered the railroad company to obey, your order to cease and desist?

Mr. KNAPP. Of course it is impossible to tell what the railroad company will do.

Mr. MANN. You have had no practical experience in reference to it at all; that matter has not been tried yet?

Mr. KNAPP. No, sir. Of course, as to a railroad company which the Commission has ordered to cease and desist from charging a particular rate, when that order has been sustained by all the courts, including the Supreme Court, we do not know what the carrier would

do. I am only suggesting to you that the carrier can make a nominal change which will effect legal comppliance with both the order of the Commission and the decree of the court.

Mr. MANN. And it has been over five years since that opinion was given by the Supreme Court, and yet no case has reached the point yet where you get any practical experience out of it?

Mr. KNAPP. That is substantially true.

Mr. RICHARDSON. I hope you will excuse me, Judge Knapp; I am very much interested about these facts, and the matter of the enlargement of the powers of the Commission. I hope that it will not put you out to ask you to give me certain information, as I was not here when you began your remarks to-day. As I understand from you, when the Commission, for instance, ascertain that the railroad is charging a dollar for certain things, and that that is too much, the Commission say that is too much, and say, for instance, 50 cents would be right—giving that as an illustration—that is not permanent, that order, but suppose it is taken to the circuit court, as you suggest it will be or can be; it can be taken to the circuit court. Now, the circuit court passes upon the order of the Commission as made, and sustains the Commission; then an appeal is taken to the final court, the United States Supreme Court, and that court holds that the order of the Interstate Commerce Commission is not right and proper, and cancels it and sets it aside; has the railroad, from the time you made that order, been complying with it or not, and charging only 50 cents?

Mr. KNAPP. Not at all.

Mr. RICHARDSON. Then what charge is it making?

Mr. KNAPP. The charge originally complained of.

Mr. RICHARDSON. The original one?

Mr. KNAPP. Yes, sir.

Mr. RICHARDSON. Then your order has no effect upon the situation so far as decreasing the charge is concerned?

Mr. KNAPP. No, sir; our order has no effect until it is enforced by court, and of course it is not enforced by a court until the court of last resort has decided the question.

Mr. RICHARDSON. That, as I understand, is not the provision contained in the Corliss bill at all.

Mr. KNAPP. The Corliss bill proposes to make—

Mr. RICHARDSON. To make it arbitrary, and enforce it at once?

Mr. KNAPP. To a certain extent.

Mr. CORLISS. If I understand you, you state that if the rate was a dollar and you should hold that that was an excessive rate, and you had recommended 80 cents, the Supreme Court has held that you could not enforce an 80-cent rate, nor would the court uphold that order and enforce an 80-cent rate.

Mr. KNAPP. That is right.

Mr. CORLISS. So that really, when these cases which are now pending reach the Supreme Court of the United States, all that the court will decide, if they follow their prior decisions, is whether or not they should cease and desist from charging a dollar?

Mr. KNAPP. That is all.

Mr. CORLISS. And that a compliance with the decisions to the extent of 5 cents would be a satisfaction of that entire judgment, and you would have to start over again.

Mr. KNAPP. You have simply got a final decree that the rate originally complained of was too high.

Mr. CORLISS. And they could start again at 99 cents.

Mr. KNAPP. You have got no lower rate fixed. You have no actual relief to anybody. That must be so.

Mr. MANN. They have the power to decide that a rate is unreasonable. That is all they can hold, as a matter of law?

Mr. KNAPP. Under the present statute.

Mr. MANN. They can argue all they please as to what is a reasonable rate, and then it is in the discretion of the railroad company to accept the statement of the court as to what is considered to be a reasonable rate or not, just as they please, or at least you have not tried that to see whether it is or not?

Mr. KNAPP. There has not been time to get a case through the Supreme Court.

Mr. MANN. You have not any decision on that. All you could do was to say that the dollar charge was too much, but the Supreme Court could say what a reasonable charge was.

Mr. KNAPP. No, sir; they can not do it.

Mr. MANN. They can say what a reasonable rate is, but they can not issue an order fixing what it shall be.

Mr. KNAPP. Who can say it?

Mr. MANN. The Supreme Court of the United States.

Mr. KNAPP. No, sir.

Mr. MANN. Oh, yes, they can. It may become very necessary in arguing a particular case. But they can not fix it as a future rate.

Mr. KNAPP. They can only say to the extent of deciding that the rate has been or is unreasonable.

Now, gentlemen, that is the whole question; that is, that is the vital question, the important question.

Mr. ADAMSON. There would still be a good deal of circumlocutionary legislation even after you got the Corliss bill?

Mr. KNAPP. Well——

Mr. ADAMSON. If the Supreme Court decides that the rate you fix, even under the Corliss bill, is too high, you can fix another rate, but they can still make that——, can they not?

Mr. KNAPP. No, sir. The Corliss bill provides that when the Commission has heard a case in the way I have described——

Mr. ADAMSON. Yes, sir.

Mr. KNAPP (continuing). It may not only condemn a rate complained of, but may prescribe the rate to be substituted in its place in the future.

Mr. ADAMSON. That goes to the courts, and that case is carried through, and they decide that it is too high, and then the Corliss bill says that you may sit down and make another rate, and they can say that that is too high——

Mr. KNAPP. Yes, sir; of course.

Mr. ADAMSON. Why don't you fix legislation so that it has an end somewhere? It looks like human sagacity ought to be able to fix it so as to end this matter somewhere.

Mr. KNAPP. I undertook to say in the beginning that I am not in favor of extreme or radical changes in this law.

Mr. ADAMSON. You would like the present generation to get some benefit out of this, would you not?



Mr. KNAPP. I think the development of our laws on this subject should be by evolution, and not by revolution. And I am not here to advocate—because no pending measure proposes it—any arbitrary or final power on the part of the Commission.

The question is right here, in very narrow compass, and very easily stated. When you have the complaint and the parties all before you and the question examined with all the light thrown upon it that can come from the testimony of witnesses and the argument of counsel, what order shall the Commission have authority to make in such a case? That is all the question there is. That is the real question here.

Mr. RICHARDSON. Right there, do you not think that as a mere matter of common sense and conservatism, from the bench or from any commission that has such authority as that, if the Supreme Court had held that a dollar charge was not reasonable, or any authority was given to you to take advantage of the Corliss bill and fix another charge without any further evidence, that you would fix it, in view of the decision of the Supreme Court, and use conservatism and good judgment in trying to strike a middle ground?

Mr. KNAPP. I can not imagine a commission that would not do that.

Mr. MANN. You can imagine a railroad company that would, but not a commission?

Mr. RICHARDSON. That is another question entirely.

Mr. ADAMSON. You say five years have passed, and you have not got the first case determined yet. If you decided a case under the Corliss act, and the railroads spent five years in going around through the courts, and then it comes back and you take another hearing, and on your own suggestion, or on the suggestion of the court's talk, you make another rate—you may hear evidence or not, or you may fix the new rate on the record, and then the railroad enters another rate, and then the court says that you have not got it quite low enough yet, and it is not at all certain that the Supreme Court will ever decide to let a rate stand; there is a generation gone—

Mr. KNAPP. And in such a case the recommendation of the Commission has been heralded to the country as “the inordinate demand of the Interstate Commerce Commission.”

Mr. MANN. Mr. Adamson is pointing at the question, as I understand it, as to whether the court, the Supreme Court of the United States, which refused your decision upon all the evidence you had before it, shall have the power to say what is a reasonable rate.

Mr. KNAPP. Do not let us have any confusion on that. No court can fix a rate for the future. If authority is given to determine in such a case as I have described, what rate shall be substituted for the one under consideration, that authority can be given only to a commission, or exercised directly by Congress itself. It can not be given to a court.

Mr. STEWART. Right there, railroad corporations want to avoid litigation?

Mr. KNAPP. Assuredly they do.

Mr. STEWART. In case the Supreme Court should decide that the Commission was right, and they should fix a reasonable rate for the future, do you not think that the corporation in order to avoid litigation would acquiesce, if it were a reasonable rate?

Mr. KNAPP. Certainly.

Mr. STEWART. To avoid the litigation Mr. Adamson speaks of—further litigation?

Mr. KNAPP. When you bear in mind the very limited authority the Commission now has, which is simply to say, "This thing is wrong," and bear in mind that the order of the Commission saying it is wrong is not obligatory upon anybody, that before it can be enforced there must be a suit in the courts for that purpose, which must be carried through to the courts of last resort; when you take all that into account, I think it is to the credit of the railways of the country as a whole that so many of the recommendations of the Commission have been adopted.

Mr. MANN. You say that no court can decide what is a reasonable rate?

Mr. KNAPP. For the future.

Mr. COOMBS. It can not establish a rate?

Mr. KNAPP. Can not establish a rate.

Mr. MANN. That may be true that it can not establish a rate.

Mr. KNAPP. A court can decide whether a rate has been reasonable or not.

Mr. MANN. The court can decide whether a man has offered a reasonable rate under the common law, and always could; that is a future rate.

Mr. KNAPP. Yes, sir; but it applies only to the time when the tender was made, and to the particular traffic to which the tender relates.

Mr. COOMBS. Does the Supreme Court pass upon questions of fact in its appeals?

Mr. KNAPP. Oh, no; no, sir.

Mr. COOMBS. Does the circuit court of appeals?

Mr. KNAPP. I understand, of course, the circuit court will pass upon the facts.

Mr. COOMBS. Upon your appeal, what do you appeal upon?

Mr. KNAPP. Let us try to avoid confusion at that point. Bear it in mind, gentlemen, that while the determination whether a given rate is—that it has been—reasonable or not, as a judicial question, the determination of the rate to be substituted in the future is not a judicial question, can not be made a judicial question, and that authority, if exercised at all under the circumstances, must be exercised either by the legislative body itself or by an administrative tribunal to which some portion of the legislative power is delegated. Now, that being so, of course you must bear this in mind, that it is incorrect and misleading to speak of an appeal from the order of the Commission. The Commission is not a court, and in a constitutional sense the carrier has not had its day in court when the Commission has decided its case. The carrier gets its day in court under present law when the suit is brought to enforce the order.

Mr. ADAMSON. Your idea is not to ask for a greater number of powers, but for more power as to the few things that you do try to do; that while you do not seek to go further and fix a rate, or decide how low a rate ought to be, you want the power, when you say a rate is too high, to put that opinion in force and stop the railroad charging that rate?

Mr. KNAPP. This bill proposes that the Commission shall not only have authority to say that this rate complained of is wrong, but to

determine the extent to which it is wrong, and prescribe the rate to be put in its place and observed in the future.

Mr. ADAMSON. I talked to you a while ago about the wheel going around so often. Had we not better improve that bill, or amend it, so as to say that after that thing has been back to you a certain number of times it shall stop, except under such conditions as extraordinary motions made in court, showing that extraordinary conditions exist, beyond the power of a party to control, or something of that sort, and so put an end to the matter somewhere?

Mr. KNAPP. With reference to that, as I said, when you have determined the question as to the authority of the Commission, what kind of an order to make, then the next question comes, what effect shall be given to that order; how shall compliance with it be secured; how shall a review of it by the courts be permitted?

Mr. Thurber, this morning, in commenting on that branch of the case, indicated his opposition to the method of procedure embodied in the Corliss bill, which is that the order of the Commission shall be self-enforcing, so to speak, by reason of accumulating penalties for disobediences, the carrier having the right to go to the court and file a bill to restrain the order; but Mr. Thurber spoke of that as shifting the burden of proof. I want to call your attention to the fact that it does not shift the burden of proof at all. The importance and desirability of that change is not in any way connected with the burden of proof, because under the law as it now stands, when the bill is filed to enforce the order, the findings which the Commission have made constitute a *prima facie* case. The burden of proof is now on the carrier when you get into the courts. The decision of the Commission that this rate is unreasonable and that the carrier must cease and desist from charging it, is *prima facie* good in the circuit court, and the burden of proof is on the carrier to show otherwise.

Mr. COOMBS. Is that a judicial order or a legislative order?

Mr. KNAPP. It is a part of the present law.

Mr. COOMBS. I am asking you for a distinction. Is that a judicial or a legislative order?

Mr. KNAPP. Well, it is an act of Congress which prescribes the method by which the authority of an administrative tribunal is to be enforced.

The CHAIRMAN. The hour of adjournment has arrived. We will be glad if you will be here tomorrow at half past 10, Judge Knapp.

Mr. KNAPP. Very well.

(Thereupon, at 12 o'clock m, the committee adjourned until tomorrow, Friday, April 25, 1902, at 10.30 oclock a. m.)

---

FRIDAY, April 25, 1902.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Judge Knapp, will you resume your statement?

Mr. ADAMSON. Before Judge Knapp proceeds I wish to say that I have been listening with great interest to these gentlemen, and I wanted to hear Judge Clements, but I have an important engagement

at the Treasury Department with some constituents of mine, and I want them to understand why I withdraw. I will have to ask you to excuse me.

**STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN OF THE UNITED STATES INTERSTATE COMMERCE COMMISSION—Continued.**

MR. KNAPP. Mr. Chairman and gentlemen, you have honored me with such respectful attention during the making of my quite protracted statement that the best acknowledgment I can make is to bring my remarks to a close at the earliest possible moment.

I have endeavored to point out that the first question on this branch of the case is as to what orders the Commission shall have authority to make; and I do not know that I care to add anything to what I have already said upon that subject. You understand the present situation. You are aware that after the fullest investigation, upon complaint, notice, and due hearing, the only order which the Commission now has authority to make is, if the facts so warrant, for the carrier to cease and desist from charging the particular rate, or maintaining the particular rate relation, which is complained of. The question is whether in those cases, and under those circumstances, and subject to the conditions proposed, the Commission shall have authority not only to say that the rate or rate relation complained of is unlawful, but also authority to prescribe in the first instance a rate or rate relation which shall be substituted in place of the one complained of. That is the question.

THE CHAIRMAN. Now, Judge, if this will not interrupt you, I wish you would state how comprehensive that order should be, looking to the entire rate charges of a system of roads; whether it should be so comprehensive as to cover an entire schedule of rates, as one act, or whether it should be limited to the particular rate that was complained of. I ask that question for this reason: that I am satisfied that there are parties who would, perhaps, be contented to have, we will say, to illustrate, a single rate regulated by a commission when they would not be willing that at one time and in one order there should be an entire rearrangement of the rates of their whole system of roads. If you would give your views as to that matter, whether the power ought to be limited, and if so, how it would be limited, I think the committee would be glad.

MR. KNAPP. If I correctly understand the present law, as it would be modified by the provisions of the Corliss bill in the particular section now mentioned, I must say that it is conceivable it would be within the terms of the law that the entire schedule of a given carrier, or system of carriers, might be made the subject of complaint and adjudication. I think I perceive the objection which is suggested by your remarks.

MR. MANN. If that were the case, would it not be necessary that the court, in passing upon it, should have the authority to say that the order should remain in force as to one part of it if the court should find as to a particular commodity, for instance, the order made a rate unreasonably low? Under this provision the court can either order the order of the Commission to remain in force or not, and if it

found that the rate on a particular commodity would be too low, what would be the effect of that?

Mr. KNAPP. May I defer taking up that question until I take up that particular part of the subject? I am endeavoring to confine this now to what order the Commission shall have power to make. The effect of that order, how it is to be enforced, how it is to be reviewed, is another part of the question.

Mr. MANN. Very well.

Mr. KNAPP. Now, Mr. Chairman, the best answer which I can make to the suggestion presented by you is this: In the first place, it has never yet happened, in the experience of the Commission, that complaint has been made of an entire system of rates, or any carrier, or system of carriers, except where the element of discrimination was involved, and then the complaint was not that the rates were excessive, but that they were unfairly adjusted as between two different localities. I do not recall an instance, and I am very certain not one has ever occurred, in which anything like the comprehensive system of rates has been challenged on the sole ground that it gave the carrier an undue revenue, and imposed upon the public an undue burden. And I think that will always be the case.

My further answer is this: Under any pending proposal the Commission would have no authority to make any kind of an order except one which was justified by the facts proven in the investigation, and as a matter of practice and justice, if a complaining locality should be able to establish, the burden of proof being laid upon it, that the whole range of a given railway's charges were excessive, and secured to that carrier a greater revenue than it was entitled to, and imposed upon the public a burden which it ought not to bear, if that was proved and established to the satisfaction of fair-minded and impartial men, I do not see how we are to resist the conclusion that an appropriate order ought to be made, that is, in such a case. So that when you take into account that there is to be no arbitrary authority, no *ex parte* decree, but only such a determination as a judicial tribunal might reach if it had jurisdiction upon the precise facts, I do not know why the authority should not go to that extent. I add to that—

The CHAIRMAN. Would you object to giving your views upon the practicability of the procedure; for instance, suppose that a complaint originates in New York, where the entire system terminates, and where the complainants might be interested in a rate on some one of the subsidiary lines, branch lines, in a very remote region. What would be the practicability of entering in on the part of the Commission to the necessary proofs, to go over all of the rates from, say, the adjacent stations that might be on that road, and then the practicability of a review of all of that by a court within the limited time of two years, treating it simply as a practical matter, you striving for the information that would be necessary to enable you to make your order, and the court then, in making that investigation which would enable it to determine whether that order was a just one, and involving the entirety of one of these great systems, terminating, we will say, at a seaboard point?

Mr. KNAPP. There is no impracticability in theory. The practical difficulty would be, and it is almost insuperable, I think, for any complaining shipper or locality to make proof that would justify the Commission in interfering with the general range of rates of one road, or a

system of roads, if the element of discrimination between localities was not involved.

One thing and another, Mr. Chairman, has led me to give some consideration to that question, and I have endeavored to inform myself by reading with care the decisions of the Supreme Court and other courts in cases which have some relation to that question. The observations of Mr. Justice Brewer in the recent case of the Kansas City stock yards indicate to my mind that no tribunal would be warranted in reducing the general range of rates, thereby reducing in a substantial degree the entire revenues of the railroad or system, without the clearest and most cogent proof that that carrier was exacting an undue tribute from the public.

Such consideration as I have given to that question leads me to believe, Mr. Chairman, that it would be extremely difficult, practically impossible at the present time, to prove such a case as your observation suggests. I doubt very much whether it can be done. Speaking for myself, I am inclined to say this: That you can not materially reduce the entire revenues of a railroad system until you have some definite basis upon which to proceed; and one of the difficulties which must lie at the foundation of any such inquiry is, on what principal sum is this carrier entitled to make dividends, and then the question comes, What dividends is it entitled to make? Now, when you consider the way in which our railway systems have actually been developed, how they have been built and rebuilt, and are never finished, the question of determining with any reasonable certainty what aggregate sum has been expended on this property which ought to get a return, if the business warrants, you have a very difficult question to solve—one which commissions and courts, I think, will approach with a full sense of its difficulty and of their responsibility.

The CHAIRMAN. I realize in part the difficulty, and the infinite number of factors that enter into the matter as elements of cost of construction, and conditions of operation, and that was why I wanted to know, in your judgment, in case a question of that kind should be presented to you, if it is presented to you in the nature of a complaint and if issue is joined by the answer of the company, then it must be investigated.

Mr. KNAPP. Quite true.

The CHAIRMAN. And what the nature of the proof would be I do not know. Of course I do not know what the character would be, what the elements that would enter into the cost would be; all of that would depend, I suppose, a good deal upon the genius of the complainant; and therefore I wanted to get your opinion, in a case of that kind, if it was practicable for the Commission to hear, and then determine, and then make such report and take such action that the court that would have to review it could have sufficient time; if it was not practically impossible to make an inquiry of this nature within a period of two years, where the case was vigorously prosecuted and resisted.

Mr. KNAPP. You mean, I suppose, if the Board of Trade of Chicago, representing the commercial interests of that city, should complain of all the rates on all the lines leading out into the territory which gets its supplies from Chicago, whether it would be practicable for such a case to be investigated?

The CHAIRMAN. That case might be an illustration, but I had in my mind some competent complainant complaining of the New York Cen-

tral system at the New York terminus; somebody in New York making that complaint on the charges of the entire system.

Mr. MANN. May I give you an instance of a complaint that has just been made, according to the newspapers, by the wholesale merchants of Chicago, who have just presented to Governor Fifer, of your Commission, a protest signed by nearly all of the wholesalers of Chicago, protesting against the railroad rates from New York and Chicago to the Pacific seaboard, which I take it would involve the question of railroad rates from one end of the country to the other, east and west.

Mr. COOMBS. What paper was that?

Mr. MANN. The Chicago morning papers that came this morning.

Mr. KNAPP. That case, if I understand the one you refer to, is not of recent origin, but has been pending for a long time; but even the case that you assume would be a different question from the one the chairman assumes, because his inquiry goes to a case that simply involves the reasonableness per se of the rates. Your case involves an alleged discrimination between localities, which is a very different question.

I know of no recent case, and I am sure there is not one, unless it is within the last twenty-four hours——

Mr. MANN. This was published in the Chicago papers which reached Washington this morning—that is, they were the papers of yesterday morning—and they state that this complaint has been presented to Governor Fifer, or that it would be presented, I do not know which, and the allegation was that the freight rate from New York to the Pacific coast was less than the freight rate from Chicago to the Pacific coast, and hence they alleged their freight rate was too high.

Mr. KNAPP. My very confident belief, Mr. Mann, is that the newspapers are mistaken; that they refer to a case which was commenced more than two years ago.

Mr. MANN. No; this was a new petition, I judged from the papers. Of course, I do not know; the newspapers are not very reliable.

Mr. KNAPP. A case has been pending before the Commission for a long while which, within the scope of the pleadings, presents that question; but it also presented another question in which Chicago is very much interested, and that was the real grievance, and that is the relations between carload and less than carload rates on traffic moving to the Pacific coast, which a little reflection will show comes really to be a controversy between the jobbers of the Mississippi Valley and the Middle West as against the jobbers on the Pacific coast. They did, in that complaint assail the lawfulness of what is known as the blanket rate, under which rates to the Pacific coast are the same from all points on and east of the Missouri River, and the allegation is that to charge the same amount from St. Louis and Chicago to San Francisco as they charge from New York is a discrimination against St. Louis and Chicago.

Mr. COOMBS. Is that why the jobbers of the Pacific coast opposed the amendments to this bill?

Mr. KNAPP. Well, Mr. Representative, I was not aware that the jobbers of the Pacific coast do oppose it, and if they do I certainly can not undertake to say what their reasons are.

Mr. COOMBS. I will show you a letter wherein they do oppose it [handing letter to Mr. Knapp]. This is from the port of Portland.

Mr. KNAPP (after examination of letter). It will serve no useful pur-

pose to enter into a detailed discussion of that matter; but I may mention that I can understand the attitude of the Portland jobbers, because while there is one relation between carload and less than carload rates on traffic moving from Chicago to St. Louis and San Francisco, there is a different relation in carload and less than carload rates on traffic moving from St. Louis and Minneapolis to Portland. The North Pacific jobbers have now got the relation between carload and less than carload rates that they want and that St. Louis wants, so that it is quite natural that the Portland people should not want their present arrangement interfered with, or that we should have any authority to interfere with it, while some equally enterprising gentlemen in Chicago and St. Louis and San Francisco are equally desirous that we should have that power.

Mr. COOMBS. I will state that the jobbers of San Francisco have taken the same position as the jobbers of Portland have.

Mr. KNAPP. I did not know that.

Mr. COOMBS. I will state that they have. I have letters from them as well as from the jobbers of Portland. I did not happen to have them, and I have probably lost them, but I kept that one. That was addressed to somebody else and it was handed to me, which is the reason that I happened to retain it.

Mr. KNAPP. Let me say, Mr. Chairman, I can only repeat that it would be possible for a community to bring a complaint which would challenge the reasonableness of all the rates of all the roads and in all directions in which that community was interested. They can do that now. No bill pending here increases the jurisdiction of the Commission over the subject-matter.

The question is what order in such a case the Commission shall have power and authority to make after it has heard all the facts, and while I must admit that a complaint could be brought which would challenge the whole area of rates of a system, or of more than one system, I think it would be very difficult for the complainant to furnish the proof which would warrant the Commission in making an order reducing those rates simply on the ground that they were unreasonable, and I say further that if that proof should be made, if facts should be established which fairly lead to that conclusion, I do not know any reason why such an order should not be made. If the entire New York Central system is charging the public for its services a sum which gives to that system a greater revenue than it is entitled to secure, and imposes upon the great public which that system serves a greater transportation burden than it ought to bear, and if facts are proven which sustain that conclusion, I do not know any reason why it should not be reached.

You see, gentlemen, to say otherwise it seems to me forces this alternative: The railroads being free from any legal restraint in establishing their tariffs, and being under legal obligation to enforce those tariffs, when they are once established, upon everybody, if there is no way in which those tariffs can be changed when they are proven to be wrong, or because they are oppressive or relatively unjust, then, of course, the determination of what the railroads of this country shall earn, what they shall charge, is in their own hands, and I am not prepared to admit, Mr. Chairman, that the owners and managers of our railway systems are entitled to say themselves what the public shall pay and that their determination in that regard is to be practically



incapable of alteration; which brings us right back again to the question, in such case as that, after complaint and notice and due hearing, and opportunity for the carriers to show every fact upon the question presented, if those facts establish with reasonable certainty that charges complained of are wrong, the question is, Shall the Commission have authority to say what the carriers are to do to correct the wrong? That is all there is of it.

The CHAIRMAN. There is a little more than that, Judge, in the abstract. The question as you presented it is undoubtedly the correct position. I do not think that anybody, or but very few persons, would gainsay that, outside of those who are directly interested; but here is the situation: Up to this time that claim on the part of the railway companies has been acquiesced in by the lawmaking power. The proposition now is to change the location of that right to fix rates. Of course that means antagonism. There are friends of the old method, the present method, and there are friends of the new. There is an effort being made to get legislation, legislation that is urged and legislation that is opposed. Now, as you are presenting the question, and I think rightly, on the part of the railway, the argument is: Here is a surrender of a right which is of inestimable advantage to us, and it involves our entire possible prosperity, if the power that is to be granted is to be as comprehensive as Judge Knapp has just claimed. The object being to get remedial legislation, there are difficulties in the way of securing that.

What I was trying to get from you in your view in the presentation of that was this thought: Is there some intermediate method, as, for instance, the establishment of the power of the Commission over a particular rate, over a rate that is specific and especially complained of, and of marked importance, that could be the subject of legislation without taking from the company the present power that they enjoy over their whole system of rates?

Mr. KNAPP. Well, Mr. Chairman—

The CHAIRMAN. You can see that much opposition might be removed in the way of securing very beneficial legislation.

Mr. KNAPP. I think I perfectly appreciate the position which many railroads take. I think I appreciate its very great importance. As I remarked a couple of days ago, my study of this question, a study which I try to make careful and conscientious, leads me to great conservatism. I am not disposed to advocate any radical alteration in this law, nor any extraordinary increase in the authority of the Commission. It is not necessary for me to advocate that the Commission be given the authority in respect of making an order which the Corliss bill proposes, for that question is for you. My duty is to explain to you exactly the present situation, to have you understand precisely the extent to which the Commission's authority now goes, to point out the authority which I think it would have if this measure were adopted. It is for you, gentlemen, to say whether that authority shall be granted or not. I am not covetous of increasing authority.

The CHAIRMAN. No; I do not—

Mr. KNAPP. It is often charged, Mr. Chairman, that the Interstate Commerce Commission has disregarded its obligations under this law, failed to perform the duties which it might perform, and is eagerly reaching out for great authority with a view of making itself a body of enormous consequence. There is no foundation for the charge; no

facts can be adduced to support the contention. The most careful study of the reports which the Commission has made to the Congress, and the recommendations which have been embodied in its reports, the most careful examination of the things it has done, the views it has expressed in deciding cases, and otherwise attempting to administer the present law are a complete refutation of any such charge.

The CHAIRMAN. Well, I do not suppose that it is necessary, Judge, for you to say that to those of us who know you. But there are persons who are not willing to intrust any five men with the enormous power that is involved in the possible order that we have been discussing this morning. The committee would be glad, I think, to have the benefit of your large experience in the suggestion whether it is possible to effectuate benefit by the bestowal of a less power, a power with regard to a part of this immense interest, that might be more immediately the subject of complaint, with regard to the matter that might be more immediately the subject of complaint. I can see how a board of trade might pass a resolution instituting a proceeding of this kind with regard to all rates on an entire system when there are two or three particular matters, perhaps, which are of enormous importance. Is there any way of separating and of taking out those which are of great importance in this particular contention, that particular contention, and to give power to the Commission to adjudicate those, and the others for a special complaint, or where there are special complaints with regard to a portion of the other questions?

Mr. KNAPP. Mr. Chairman, I make the very best answer I can, and am absolutely frank in it, of course. Now, I honestly doubt whether there is any middle ground such as you suggest. I think you will have great difficulty in defining in what cases the Commission shall have authority to name the future rate and the cases in which it shall not have that authority.

The CHAIRMAN. Yes, but can you not come to the other end of the proceeding and define what may be the basis of a complaint? Instead of allowing a man to complain against all of the laws of nature, complain against that particular snowstorm that just now assails him.

Mr. KNAPP. Well, Mr. Chairman, if there is some way by which proceedings can be limited to specific and definite grievances, there is very much to be said in its favor.

The CHAIRMAN. In your judgment is there a method of that kind that may be adopted?

Mr. KNAPP. Oh, yes; there are things that could be done. If I understand this bill, in connection with the present law, the Commission itself could proceed on its own motion without anybody's complaint. It could, acting upon its own judgment, formulate a complaint against the rates of an entire system and in a sense be the nominal complainant representing the public interests. Now, of course, it is entirely feasible to say that the Commission shall not exercise the authority here proposed except in case of somebody, some responsible person, complaining. You could drop out the right of the Commission to institute a proceeding on its own motion. But I do not see that that would help us very much.

Of course this has been suggested; of course you gentlemen are aware that most railroads feel under very considerable restraint, in view of the prohibition of pooling and the application of the antitrust law, and there have been various proposals to modify those laws in

their application to railroad operations, and it has been suggested, that so far as the railroads secure by legislation rights of contract and association with each other, which go to the question of their rates, that the Commission should have authority in respect to the future of those rates, and not have this authority in respect of rates which are not made by association and agreement. Of course there is a distinction that could be made. If, in your judgement, the time has come when railroads ought to be permitted to take associated action, to agree with each other as to what are just and reasonable rates, to agree with each other to maintain those rates, to be able to make agreements of that kind which are enforceable in the courts, why then you could provide that so far as their rates are made or maintained by those agreements, that those rates should be subject to this authority, and that rates which are not thus made or maintained should be only subject to the authority which the Commission now has.

But you can not very well, Mr. Chairman, I think, limit the right of making complaint to the actual shipper. I think the value of any law on this subject largely results from the fact that representative bodies, commercial organizations, municipalities, street-railroad commissions, representing the great body of shippers, should be competent to complain, and if you allow such representative complaint, you will have some difficulty in defining the narrower field from the one now open to investigation, unless it be in connection with legislation which gives the roads rights of contract with each other which are now denied, when that could be imposed in the nature of a condition.

The CHAIRMAN. Might it not be limited somewhat by the establishment of a jurisdictional fact, namely, that the complainant had an interest in the subject-matter of the complaint?

Mr. KNAPP. Yes, but—

The CHAIRMAN. Now, if individuals complain, individuals alone, it is scarcely conceivable that any one individual would ever have an interest in all parts of a schedule of rates. It is scarcely conceivable that any one individual in the city of New York ever received a consignment from all of the stations on the New York Central system.

Mr. KNAPP. That is quite true.

The CHAIRMAN. Is it possible to limit the complaint to one who had a pecuniary interest in the subject-matter of the complaint?

Mr. KNAPP. Yes, sir; that is quite possible.

The CHAIRMAN. Well, what would be the effect of that, in your judgment?

Mr. KNAPP. I do not think there would be many complaints.

The CHAIRMAN. You think not?

Mr. KNAPP. No; only in rare instances does any one person have a sufficient pecuniary interest to justify him in entering upon a protracted contest with a railroad, and unless chambers of commerce and boards of trade, municipal organizations, State railway commissions, and other organizations which represent the general public can be competent complainants, I do not think much can be done.

The CHAIRMAN. If the complaint was limited to State railway commissions or to grand juries, or to some recognized and authorized body, what would be the effect of that, in your judgment?

Mr. KNAPP. Well, of course it is competent to limit the jurisdiction of the Commission just as far as you see fit.

The CHAIRMAN. Of course I know that; but what I want to get at is

your judgment on the benefits of the harmful results of that kind of limitation. We are trying, Judge, to get the benefit of your experience on this subject.

Mr. KNAPP. I do not need to assure you, of course, that if there is anything which I can say which will aid you in reaching a conclusion I want to say it.

The CHAIRMAN. I do not think there is any doubt about that. The difficulty is in my expressing to you just what we want to get at, just the class of legislation.

Mr. KNAPP. I will say, Mr. Chairman, in my opinion, more results would follow and more would be done to realize the beneficial purposes of this law if the Commission could be put in motion, as it now can, by these commercial organizations and representative bodies and could only make the order to cease and desist, which it can now make, than would result from much narrower jurisdiction and greater authority.

Desiring only to aid, if I can, in my limited way, the successful working out of this great railroad problem, I will say that I would rather the Commission had only the authority in respect of making an order, which it now possesses, in connection with some other things, than to be able to name the future rate only in case a complaint was brought by a shipper who showed a pecuniary interest.

The CHAIRMAN. Well, what would be the result if the limitation I have suggested was made, and the matter was confined to the complaint of the persons with pecuniary interests involved, and the public aids that I have spoken of—grand juries, district attorneys, State commissions—and the Interstate Commerce Commission retaining the power that the Commission now has with reference to the initiative of proceedings?

Mr. KNAPP. Well, I would not be in favor of limiting the right of complaint to interested shippers and to State railroad commissions, because many States do not have railroad commissions, and where they do their duties are diverse and their authorities vary. Their attitude in one State is quite different from what it is in another. That would not give us any uniform, harmonious method of initiation, and I certainly would not be in favor of limiting the complaints to cases where there is a presentation by a grand jury, nor would I make it competent for a grand jury, by its presentation, to institute a complaint.

The CHAIRMAN. I did not mean the formal institution by indictment, but by complaint; that simply because of the necessity, as I thought, of having a number of possible complaining parties.

Mr. KNAPP. No, Mr. Chairman; when you bear in mind that we are dealing in these cases not always with individual rights, not with controversies between man and man, but dealing in a legislative way with results which must affect everybody, I do not think it would be wise or useful to limit the right of complaint to an individual having a pecuniary interest in a rate; that, as I said, I think we will get more useful results and accomplish more to leave the authority to make an order just where it is, with the freedom of initiative as it now exists, than we would to very much narrow the field of complaint and increase the authority of the Commission in that narrower field.

The CHAIRMAN. As it is now, any person may lodge a complaint and put in motion the legal machinery for investigation?

Mr. KNAPP. I might say in that connection what perhaps is not very

important; still the Commission is not bound to proceed in any case. The Commission is unlike a court in that regard. An individual may bring an utterly frivolous suit and the court is bound to hear it. But the Commission only proceeds on complaint, in its discretion, and it may decline to investigate a given case, and has frequently declined, because it was satisfied from what it knew or what appeared in the application that it was not brought in good faith, had not any merit, that no useful results would come from investigation, and it declined to do anything about it, and I think that discretion should remain. I think we should be kept an administrative body, with discretion to act, and not be like a judicial body which is bound to act no matter how frivolous the case or how unworthy the motive which sets the court in motion.

I have taken a great deal of time, and I want just a few minutes to speak about the other branch of the case. There is this first question about what order the Commission shall have authority to make.

Now, passing that, there is the other question of when that order is made what shall be its effect, how shall it be enforced, how shall it be reviewed? At the present time, as you are aware, the order, when made, is merely one to cease and desist, and it has no self-enforceability. It is obligatory in any legal sense upon nobody. The carrier can continue to disregard it as long as it likes, and the only way to give any effect to the order is to file a bill in equity in the circuit court and ask the court to enforce that order. In such a suit the findings of the Commission constitute a *prima facie* case, which has the effect, of course, of putting the burden upon the carrier to show that the Commission has made a mistake.

Now, I shall ask this committee to make a change in the law in the respect I am now discussing. If you make no change it enlarges the authority of the Commission to make an order. If we go no further at present, Mr. Chairman and gentlemen, in developing our theories of railway regulation, we ought at least to go now to the extent of providing that when the Commission makes an order, although it be only an order to cease and desist, that the carrier must obey that order or itself go to court to get rid of it. It is not a proper attitude for the Commission to be in, to sit in a judicial way, hearing both sides of a controversy, and rendering a decision, and then being obliged to go to court to enforce its own order, to become the prosecutor in support of the judgment which it has rendered. And without any hesitation, without having heard any objections to it from any source, I ask you at least to adopt so much of the Corliss bill as will change the method of procedure.

The scheme is a very simple one. The Commission makes an order and, as I say, suppose it is only an order to cease and desist from doing the thing that is complained of. The provision is that in case the carrier fails to comply with that order, that is, by actually ceasing and desisting from doing the thing and sets about doing something else, why, then, penalties will accumulate against it, which could be enforced by the proper district attorney.

Now, the carrier may file its bill to stay the order, so that the theory and purpose are to put the carrier in the position, so that when an order is made against it it must either do something different from what it was doing or go to court to show that that order is wrong and to get rid of it. If, for example, the rate in controversy is a dollar,

when the Commission finds upon all the facts that it is unreasonable, and makes an order to cease and desist from charging a dollar, then I want the railroad to be put in a position where it has got to make some change in the rate, if it is not more than half a cent, or go to court and get a change in the order which condemned the rate.

This change is not a radical one; not at all. When you bear in mind that the present findings of the Commission constitute a *prima facie* case, you will see that the burden is now on the carrier in the circuit court, and of course under the procedure proposed the burden would still be upon the carrier. It would have to file its bill and maintain it.

Now, in that connection I want you to observe again that the authority proposed to make an order is not to make any kind of an order. This bill does not go on that theory, and I am not advocating that while the jurisdiction of the Commission is limited to a case where there is plain violation and afterwards a full disclosure of the facts that then it can go on and make any kind of an order it has a mind to.

That is not contemplated nor advocated. It can only make such an order in the first instance as is justified by a fair consideration of those facts. And the circuit courts may stay that order if they are satisfied that it is not a just, reasonable, and lawful order. In other words, Mr. Chairman, the Commission is given authority in such a case to make a just, reasonable, and lawful order. And the courts may review the case to see whether the Commission has exceeded this authority.

Mr. RICHARDSON. There is not there, then, an enlargement of the power of the Commission as it is now?

Mr. KNAPP. Yes; it is.

Mr. RICHARDSON. I thought it was just a change of the procedure.

Mr. KNAPP. Let me explain with a concrete case. If the rate complained of is \$1, and that is heard on complaint and answer and proof, we can now only say, "Yes; that is wrong, and you must cease and desist from charging it." We can not say what rate they shall charge for the future.

Under the Corliss bill we could say "In the future you must only charge 90 cents." That simply goes to the question of the order which the Commission has power to make. It does not go at all to the question of how the order is to be enforced; so I say, in either case, whether we are to have, as now, only authority to make an order to cease and desist, or authority as is expressed here to say what the rate shall be, but not in the future, I think in either case the order should be made obligatory upon the carriers by accumulating penalties, with the privileges on their part to go to the court to get rid of that order.

Mr. RICHARDSON. The railroad must be the actor in getting rid of the order.

Mr. KNAPP. Yes; in getting rid of the order. I think that is in harmony with the general scheme.

Mr. STEWART. Would it be better, Judge, in order to prevent circuity of procedure, to have the rate fixed by the order, in the order to cease and desist, a reasonable rate for the future?

Mr. KNAPP. That is the question we are considering, whether it shall have that authority.

Mr. STEWART. I mean not only in that particular case, but in all analogous cases; in that particular order, to avoid circuity of action.

Mr. KNAPP. Well, the order could not go outside of the scope of the complaint and the testimony.

Mr. STEWART. No; but it would cover all cases that come within the testimony, could it not?

Mr. KNAPP. It could cover that case.

Mr. STEWART. And all analogous cases?

Mr. KNAPP. Of everybody affected by that question.

Mr. STEWART. And all analogous cases in the future?

Mr. KNAPP. Only so far as it would be a precedent. But when you bear in mind that these are questions of fact, or at most questions of mixed law and fact, why, the determination in one case does not furnish a precedent for another case in the same sense and to the same degree that the decision of a court on a question of law furnishes a precedent for the decision of another court on a similar question of law.

That is to say, if we were considering a case against the Mobile and Ohio Railroad, where a charge of a dollar was complained of as unreasonable, and we had authority to do so, and as the result of that investigation required that rate to be reduced to 90 cents, that would not furnish much of a precedent if we had some other case where a complaint was made that the charge of the New York Central Railway Company from New York to Cleveland, Ohio, of 25 cents, was wrong.

Mr. STEWART. Then why should the Government be put to the expense of publishing your decisions as precedents, if they are not considered worthy of being so considered?

Mr. KNAPP. They are precedents, to a certain extent. They show what has been done in a given case under the act.

Mr. STEWART. There could be a memorandum to show that, without these long decisions being printed at the expense of the Government; if they are not precedents in analogous cases they are not of much use.

Mr. KNAPP. In some cases the situations are of such a high degree of similarity that the decision made in the former case is controlling upon the latter, but frequently that would not be the case.

The CHAIRMAN. Is there not a little more involved in that matter, Judge, than is apparent from your statement? At this time the order of the Commission takes the form of a judgment only; that is, an authoritative judgment by which a railroad might be deprived of a right by the action of the court.

Under the theory that a man may not be deprived of his property without due process of law, the legal procedure that effects that change of his property is through the courts at the present time, and he has his day in court. The proceedings before the Commission are not regarded as judicial. It is not regarded as a court. It has not the power of judgment or of execution, and it can not deprive a citizen of a right and give him due process of law. Now, does not this order, or this change, change entirely that situation, and does it not invest the Commission practically with judicial power—the power to render a judgment, or to deprive a citizen of property without due process of law—if you make it effective at once, before the intervention of any judicial procedure?

Mr. KNAPP. I think not, Mr. Chairman. Now, observe—

The CHAIRMAN. Upon the supposition that a railway makes a rate to charge \$1 and the Commission says "You must charge but 90 cents," there is no judicial investigation in which you pass upon that question

of his right to charge that sum. To that extent, the extent of that 10 cents, there is a confiscation of a right without the intervention of the court, without his having his day in court, and without compliance with the constitutional provision that no man shall be deprived of his property without due process of law.

Mr. KNAPP. Now, I will put it in this way. The court has plenary and exclusive authority. If a carrier was charging a dollar for interstate carriage you could pass a law to fix that rate at 90 cents. The carrier could file a bill in court on the theory that that was an unconstitutional statute, and the court would stay the execution of that statute until the case was heard and determined. In that way the carrier gets its day in court. Now, similarly, that is just what would happen in this case.

Mr. STEWART. What if the law was unconstitutional; what would the law amount to?

Mr. KNAPP. It would not amount to anything if the court overturned it. I do not want any law that the Supreme Court says is unconstitutional.

Mr. STEWART. Unless you think that the enactment of a law by Congress is a due process of law, there is no necessity of taking time to go through the experiment of the process of the courts. If an enactment by Congress shows due process of law, does that mean an act of Congress, or a trial in court?

Mr. KNAPP. It means a trial.

Mr. MANN. The question is whether you are taking property when you fix a rate. Congress has power to fix a rate, if the rate is not unreasonably low—

Mr. KNAPP. No, sir.

Mr. MANN. It is taking private property if it is unreasonably low.

Mr. ADAMSON. If you take away the earnings and income of the railroad, I think you are materially depriving them of their property.

Mr. MANN. Not if it is more than they are entitled to.

Mr. KNAPP. Take this illustration: If a railroad was charging a dollar, and you fixed a rate of 90 cents by direct legislation, the carrier would be obliged to obey that law or to get rid of it.

Mr. ADAMSON. Yes, sir.

Mr. COOMBS. Suppose Congress or the legislature of a State passed a law directly fixing the rate itself, acting in its primary right, and should also embody in that law this term: That if the railroad company sought a remedy the onus should be upon the railroad and it would have to proceed to the courts to set it aside. Now, that is practically the proposition that the chairman of this committee put before you, except he applied it to your authority. Applying it now to the legislature itself, suppose they fix a rate and put the onus on the railroad company to ascertain whether they have done an unlawful act or not—that is, have violated the Constitution or not in taking property without due process of law—what would be the effect of that law?

Mr. KNAPP. Just this. It does not make any difference whether there is any provision in that law or not, if in the case I named, where the railroad has been charging a dollar, you should by an act of Congress fix that rate at 90 cents, whether you provided in the statute that the railway could review it or not, it would have a right to review. It would have a right to file its appeal and claim that that was an unconstitutional statute because it deprived it of its property.



Mr. COOMBS. They have this right in the absence of that, to ignore it and leave it alone.

Mr. KNAPP. Oh, no.

Mr. MANN. They have a right to file a charge that according to the bill it is not being enforced.

Mr. KNAPP. If they did not go into court they would have to suffer the consequences.

Mr. MANN. In the proceeding against them the onus would be on the Government?

Mr. KNAPP. No, sir; I think not.

Mr. MANN. The Supreme Court of the United States settled that in the original warehouse case, that the public had the authority to fix a rate for the warehouse, provided the law would be unconstitutional if the rate was fixed unreasonably low, so that it did take private property. That would be the very question—

Mr. KNAPP. Yes, sir. Now, similarly, Mr. Chairman, in this case, if the railroad is charging a dollar, and the Commission, having authority, had, after this full investigation, fixed the rate at 90 cents, the carrier can file its bill to stay that order, not only on the theory that it is unconstitutional, but on the theory that it is not a just, reasonable, and lawful order, because the Commission has authority to make only a just, reasonable, and lawful order; and the courts, I take it as a matter of course, on the filing of such a bill, would stay the order pending the hearing of that suit.

For that reason I can not advocate all the provisions of the Corliss bill in that regard. That bill, as I understand it, provides that the filing of a bill would of itself operate as a stay for thirty days, but the order could not be stayed beyond the thirty days, unless it plainly appeared to the court that the order was unreasonable upon the facts or made upon some erroneous rule of law.

Mr. MANN. I think you are slightly mistaken as to the bill, Judge. The stay of thirty days is after the order is made, in order to give an opportunity to file the bill.

Mr. KNAPP. That may be. Now, I am not prepared to advocate that particular provision.

Mr. MANN. Do you not think there ought to be a reasonable stay after an order is made?

Mr. KNAPP. Yes, sir.

Mr. MANN. So that the railroad company may have an opportunity—

Mr. KNAPP. Yes, sir; certainly. What I referred to is the further provision that undertakes not to permit a stay beyond the thirty days, unless it plainly appears that the order is wrong. That can not be determined until the case is tried. I would not myself like to see the law so framed that the mere filing of the bill should of itself operate as an indefinite stay; but I think the carrier should have a right, after it has filed its bill, to make an application to the court for a stay of that order pending the hearing of its case, and that a court should have discretion to grant that stay pending the hearing of the case. I say that because I think that is in harmony with the general administration of the law. It rather accords with one's sense of justice, and it avoids any constitutional question.

Now, it has practically come to this, that to determine what authority the Commission shall have to make an order, it is left with the

courts, then, to say whether that order shall be stayed pending the trial of the suit brought for a perpetual stay. I think that is a reasonable and workable plan.

Mr. MANN. You want a change of the law so that the order will go into effect at once. Suppose that that were done and you make an order, what is the result? The railroad company does nothing in the way of filing a bill. What is the result? Maybe the railway company pays no attention to it.

Mr. KNAPP. Yes; but then the penalties would accumulate against it. That is the theory of the bill. And in a suit to recover those penalties, I think the carrier could not question the lawfulness of the order. So on this theory the carrier is put in a position where it must either do something or go to court to get rid of the order. I think that is a very simple, workable, and not oppressive method of procedure. It does not shift the burden of proof; it would not materially change the course of litigation. It would have two beneficial results. First, it would relieve the Commission from the embarrassing attitude of being a prosecutor in the courts to enforce its own decrees. In the second place, I think this would happen as a matter of practice; I think in many cases the courts would be likely to stay the order under some provision that would require the carrier to keep an account of its traffic pending the hearing, so that if the order of the Commission were finally sustained, the money could be paid over to the shippers who were entitled to it.

Mr. MANN. I do not quite understand the distinction which you make about an order being unconstitutional when you file a bill for injunction against it, and being constitutional when you seek to enforce it by penalties.

Mr. KNAPP. If you should fix a rate of 90 cents in the case I have been talking about, and provide in the statute that if they charged more than 90 cents they should be subject to a penalty of \$500 a day, they would have to go to work to get rid of that statute, would they not?

Mr. MANN. That is a question of the constitutionality of the law.

Mr. KNAPP. Yes; it is.

Mr. MANN. Nobody questions the power of Congress to pass a constitutional act upon the subject. Now, if the act is unconstitutional, it can be attacked in any way, in the way of seeking to enforce a penalty, or in any other form that would arise.

Mr. KNAPP. I do not know about that.

Mr. MANN. It is not collateral to attack the order. It is a direct question of the constitutionality of the act.

Mr. COOMBS. You can attack that collaterally or in any other way.

Mr. MANN. Of course, you can attack the constitutionality in any way.

Mr. KNAPP. The order of an administrative body which has limited jurisdiction can be assailed on the ground that it exceeded the authority of the body that made it.

Mr. MANN. That is a question about jurisdiction. There is no question about the jurisdiction. The question would be whether you made a constitutional order or not, or violated the Constitution of the United States.

Mr. KNAPP. No, Mr. Mann; this bill does not provide anything of the kind. Undoubtedly, if the Commission made an order which

deprived the carrier of its property against its constitutional rights, the carrier could file a bill whether it was permitted to do so by this law or not, just as it could if it was fixed by statute, without any permission. But the proposition is to give the Commission authority to make a just, reasonable, and lawful order on the facts disclosed. Now, I say a court can review that action and decide whether that action is just, reasonable, and lawful on the facts, although that order, if a statute, might not be unconstitutional.

Mr. STEWART. There is no doubt that Congress can fix a reasonable rate constitutionally, but is there not much doubt under the decisions whether it can delegate that power to the Commission?

Mr. KNAPP. Not the slightest, Mr. Stewart. That has been over and over again settled.

Mr. Chairman, I feel as though I had imposed upon the committee. I am very much obliged for the patience with which you have heard me. If there are any more questions to be asked me, I am entirely ready to answer them.

Mr. MANN. You did not answer the question which I put to you a while ago as to the administration of this order which goes to the whole question.

Mr. KNAPP. What was that?

Mr. MANN. If you have the power to fix and make an order which the court must pass upon as to whether the order is reasonable or not, and the court finds one portion of the order is reasonable—as, for instance, the rate upon a particular commodity—what will be the effect then?

The court must hold that your order was unreasonable and set aside your order, but can not say that any portion of the order shall remain in effect under the terms of this—

Mr. KNAPP. That is as I understand it. If the order was not in all respects just, reasonable, and lawful, the court would stay it.

Mr. MANN. I am talking about a final opinion of the court, as to whether it should have the power to say that a portion of the order should stand and a portion of it should not stand.

Mr. KNAPP. I have no disposition to avoid the question. I have a little difficulty in understanding what it would be in a concrete case.

Mr. MANN. Suppose you fix the rates on a dozen articles between Chicago and New York, and the court, upon its decision, finds that the rate upon one of those articles is too low, should the court have the power to say that the order should remain in force as to the eleven other articles, or permit the order to remain in force, or set aside the entire order?

Mr. KNAPP. Oh, I think it should be the former. I think if the order was so separable in reference to its provisions that the court could say, "Some parts of this order are just, reasonable, and lawful, and some parts are not," that that should be done.

Mr. MANN. I take it that the court could not do that under the provisions of this bill, and I do not know whether the power ought to be granted or not. You answered the question I wanted to get an answer to.

Mr. KNAPP. There are certain general questions, but all that I care to talk about is the question whether the method of enforcing the orders shall be had as in this bill proposed, and I think it ought to be.

Mr. Chairman, unless there is some question to be asked, I feel as

though I had claimed your attention much longer than I ought, certainly much longer than I expected.

The CHAIRMAN. We have made claims upon you, sir.

Mr. KNAPP. It is my duty, and a pleasant duty, to give you all the information I can, and to make every suggestion to you that I can which will aid you in reaching a wise conclusion.

The chairman asked me to say a word about classifications. As you know, there are three great classifications—one which applies in the territory north of the Ohio and Potomac rivers and east of the Mississippi; one which applies in all of the territory south of the Ohio and Potomac rivers and east of the Mississippi, and the third, which applies to all the rest of the territory, being the territory west of the Mississippi River.

And a great deal has been said about a uniform classification for the whole United States. I think a uniform classification is desirable, and I think one could be made. Some confusion, and even some actual discrimination results from the present diversity of classification where traffic moves from one territory into another of such a kind that it is in one class in one territory and in another class in another territory, and while some instances of injustice result from that situation, and while a uniform classification for the whole country is highly desirable, there are so many other things which seem to be of so much more importance that I could not urge you to take any legislative action in that regard.

I may say, however, that a uniform classification can be secured by a voluntary action of the railroads only when they are all agreed about it, and that is not liable ever to happen; and when we get other things which are of urgent importance, and come to the question of securing uniform classification, Congress will have to take the initiative, in my judgment, and provide some way by which a uniform classification can be compelled. What the people are complaining of just now is not of the diversity of classification, but of the ease with which rates are raised by changing an article from one classification to another.

As has already been stated, and I have no doubt that you are all aware, two years ago the rates on some 800 of the articles in most common use were increased, averaging, I think, about 35 per cent, by the simple process of changing their classification from the class in which they had been to a higher class which bore a higher rate; and no measure which is pending before this committee, no point which I have discussed, would go to that question or limit in any way the present right of the carriers to change the classification of an article. Of course, we may get some day—I do not know that I would be disposed to advocate it immediately—some reasonable restraint upon the power of the road to increase rates by the simple process of changing the classification. It is a pretty serious question.

And there is some good reason, I think, for providing, if we could by a safe general statute, that where the rates on a given article have been enforced for a certain length of time, that if those rates should be increased, and anybody within a reasonable time complained of that increase, the Commission should have discretionary power to require the carrier to restore the old rate pending a determination as to whether the higher rate was justified or not. But no such proposal is before you, and I preferred, if I could, to avoid the discussion of

questions that are not likely to take the form of practical legislation except to the extent that the general principles and collateral questions are involved in the discussions of the measures before you.

The CHAIRMAN. Judge, you adverted a few moments ago incidentally to the question of pooling. I have not any doubt but what the committee would like to have your views with regard to the authorization of associated action of that kind, which comes under the general name of pooling.

Mr. KNAPP. Mr. Chairman, I have some rather definite convictions on that subject, and I am at your service, if that is your pleasure.

The CHAIRMAN. If you please.

Mr. KNAPP. I have alluded to the subject in an incidental way, but did not pursue it, because I did not understand that that question was involved—

The CHAIRMAN. It is not in any legislation pending.

Mr. KNAPP. In the bills pending before the committee.

The CHAIRMAN. It is a subject which has been discussed a great deal and is in the public mind a great deal, and we would like to have your views with regard to it.

Mr. KNAPP. Well, let me begin with putting a case this way: If we were presented with the alternative between actual railway competition maintained by a large number of actually separate and independent roads, on the one hand, and the legal privileges to be granted by Congress to those roads to associate and agree to the combination of traffic or its earning, that would be one question; but to-day it is only an academic question. So far as this subject you now suggest is concerned, the only choice we have got left is not the one I have described. The only choice that remains is between general, almost complete, railway combination, without any restraint, or to the extent that roads still remain independent, allowing them to measurably associate and make agreements with each other respecting their competitive traffic.

Now, my associate the other day pointed out to you the extent to which railway combination has already proceeded, and his statements, which I think are quite within the truth, are that already a large majority of the mileage, and the mileage upon which all the traffic practically depends, is controlled by a very few men. And it is rather curious to me to observe that the men who have been the most vociferous in opposing any idea that railroads could be allowed to carry on their operations by legalized association seem to view with entire complacency an actual consolidation of those roads. No one can tell to what extent the railway combinations of recent years and those that are to be anticipated in the future have been induced, if not forced, by our legislative policy.

No one knows what would have happened in that regard under a different legislative policy. No one can express any more than his own individual opinion, and for myself I firmly believe that if, from the beginning, we had recognized the nature of this business, its relation to every form of industry, if we had understood it as a public service, if we had appreciated the fact that the railroads are discharging a function of the Government, a function which the Government might rightfully discharge by direct agency, but which from reasons of expediency only it has so far allowed to be done by corporations created for that purpose, if we had recognized the monopolistic nature of the business, and provided by wise and reasonable rules of law for railway

association, subject to public control, then the evils which have since troubled us would not have occurred, many of the railway combinations would not have been made, there would be to-day a much larger number of separate and actually independent railway ownerships, and a far greater degree of railway competition than now occurs or is likely to occur in the future.

So that the object of the prohibition of pooling in 1887, when this law was passed, the purpose of the antitrust law, the whole legislative policy of the country in that regard, has not only failed to accomplish the object at which it was aimed, but has indirectly but potently influenced the opposite result, and we have far less railway competition to-day in this country, in my judgment, than we would have had under an opposite policy. And just so far as we can and ought to rely upon railway competition as a protection against unreasonable charges, just so far as we can or ought to get the benefit of railway competition, we must do so by allowing railroads to agree with each other and putting those agreements under public control. It is an absurdity to me, gentlemen, that one law should say to the railroads, "You must publish your rates, and you must make them alike and open to everybody, and if you depart from them you commit a misdemeanor," and to say by another law, "If you agree to maintain those rates, you also commit a misdemeanor." It is impossible for railroad operations to be conducted in conformity with both laws, and they are not so conducted, and the only recourse is to bring about the elimination of competition by such methods as the law itself provides.

Now, I said incidentally the other day, and I think spoke quite within bounds when I said it, that you would be surprised upon investigation to discover the comparatively slight and inconsequential degree to which open tariff rates have been reduced in this country within the last ten years as the result of railway competition. The basis of rates remains where it was fifteen years ago. The class rates in official territory are the same as they were ten years ago, and many articles are in a higher class than they were then. The railway competition has been a very forceful influence, but it has found expression in the secret and preferential rates by which a few men have profited, and not in reduced rates to the general public.

Now, consider the subject from another point of view for a moment. Take the railroads between Kansas City and Chicago. They had at a certain date a certain rate in effect on grain from Kansas City to Chicago. Of course, whatever rate one road puts in every other road must put in; that goes without saying. Now, suppose our laws had been so efficient, so enforceable that they would have been complied with. Suppose no railroad would ever have dared to deviate from its published tariffs on account of the risks and penalties that it would incur. Each railroad would know that if it made a reduction in the open tariff every other road would make the same reduction, so that the distribution of tariff between the different roads would be just the same on one published rate as on another. Now, under those circumstances what possible inducement would there ever be to either road to reduce its rate?

If they were charging 20 cents on grain ten years ago, each one of them charging 20 cents, and not one of them dared to make a different rate, they would have secured a certain distribution of that business between them on the 20-cent basis. Each one of them would know

that if it reduced that rate to 15 cents, every other one would go to 15 cents, and there would be no different distribution between them on the 15 cent and on the 20 cent basis. No possible inducement to reduce the rate. And I fail to see how it is to be expected that any railroad tariff will be reduced as a matter of fact by methods which the present laws contemplate.

Of course, the railroads discovered it, and what is the result? The competition took the form of a rebate and the secret rate, and that has done more than any other influence, in my judgment, to build up the great concerns and strengthen the great combinations which are now regarded with so much apprehension.

I believe that we should have had a great deal less of that sort of thing, that industrial combination would not have taken many of the forms which it has assumed, if from the beginning of railroad history it would have been impossible for any railroad shipper to get any better rate than a smaller one.

So the actual result now of railroad competition is to benefit the large shipper. The principal outcome is to aid the strong against the weak. It is not the isolated and infrequent shipper who gets something off the tariff; it is the large combination.

Mr. STEWART. Then you think that providing pooling would prevent any further combination between the railroads?

Mr. KNAPP. I think it would have a tendency. Here are the roads between Kansas City and Chicago. Pooling would simply mean an agreement between them to divide the competitive traffic. They would retain their separate organizations, their separate ownership, their corporate autonomy; they would simply be allowed to make legal agreements with each other for the combination of the competitive business, and that agreement would be under ample public control. Is not that better than to allow them to actually combine in one case? At least the competitive attitude remains. There is potential competition. There is independent and separate ownership. In the other case, if you have consolidation, why the competition is permanently wiped out.

Mr. STEWART. Do you think the railway companies would be satisfied with less profit under the pooling system than they get under the combination system?

Mr. KNAPP. No one can say about that. I do not know.

Now, going a step further, having referred to present conditions and the present situation, we are liable, possibly, to be confused by this word "pooling." If the right of contract were granted which is now denied, I do not anticipate that that right would be exercised to any great extent in the actual combination of traffic or its earnings. It is no longer necessary to do that. Systems have been so developed and have so natural relations to each other that there is not an assembling of the competitive traffic at some point, and the combination of that by an agreement. The right should be a broader one than that which is denied by the antipooling section of the present law—a right to form associations, a right to make agreements with each other as to what are just and reasonable rates, and to agree with each other to maintain them. That is the general form which those matters would take, rather than the specific one of a combination of traffic.

Now, I put the matter from my point of view on the broad ground of public welfare. I can see where the competition between railways,

which it has been the aim of our laws to enforce, has given great advantages to large capitalists. I fail to see where it has been of any appreciable benefit to the great mass of our people. I think you will have difficulty in demonstrating that that policy has operated to the advantage of the farmers, the small dealers, the wage-earners of the country. It has been an immensely profitable policy to the Armours, and the Rockefellers, and the Havemeyers of the United States; and if I had to choose, gentlemen, between a range of rates absolutely imposed upon everybody, without deviation or exception, although somewhat higher than might be reasonable—if I had to choose between that and the secret rates to a few large shippers, with the resulting discrimination which puts the great mass of small dealers at serious and sometimes staple disadvantage, I would say that the public welfare was promoted by the former policy.

Take our antitrust law. Have you estimated the scope of that law as it has been interpreted by the Supreme Court? The logic of that decision is to condemn any sort of understanding or arrangement between rival roads which in any degree restricts their competition. So if the rival railroads should agree on storage charges or demurrage, or car service rates, those incidents of transportation which the general public desire to have uniform, stable, and certain, to say nothing about rates, those carriers would violate the antitrust law, because our Supreme Court has said that law means this. It is not a question whether the restraint upon combination is reasonable or unreasonable, but they have said that any arrangement, any understanding, any combination, which has the effect of putting the restraint upon the competitive freedom of parties, although that restraint be wholesome and beneficent to individuals, is a violation of the antitrust law, and I agree with my colleague, Judge Prouty, when he told you that if the antitrust law could be and should be applied to the railroad operations in this country—the spirit of it be applied—it would bankrupt every railroad and bring on a transportation condition of chaos.

And one of the difficulties of this whole situation, in my judgment, is that there is no legal sanction or support for that method of railway operation, according to which they ought to be conducted. Why, the commerce of the country, the welfare of the country, requires the utmost freedom of action, and every arrangement of association and interchange and uniformity gives an indirect but very great public advantage.

So I say we ought to have recognized the nature of this industry and its relation to every other form of activity, and should have encouraged associated action under proper restraint. Why, gentlemen, just imagine the agriculture of this country, the manufactures of this country, the mining of this country, conducted by methods which have no legal sanction or support. And that is exactly the railway situation to-day; and while the business done by our railroads is enormous and their earnings very great, I regard the general railway situation with no little apprehension for the very reason that I have now tried to suggest.

If the Attorney-General is right in his suit against the Northern Securities Company—and very likely he is; I am not implying the slightest criticism upon the Administration for bringing the suit, for I think, on the contrary, the Administration is very much to be com-



mended for bringing it—if he is right, just see the consequences that are involved.

Now, it may be that the technicalities or the language of the anti-trust law are violated in the one case and not in the other, but the principle involved is precisely the same in all of them; and if the combination which has been attacked can be broken up, then upon principle and upon grounds of public welfare every railway combination which has been effected in this country within the past ten years ought to be broken up; and with what result, to what end, to what good purpose?

Resolve these great systems of railway into their constituent elements, bring us back into the condition we were in twenty-five years ago. Why, the whole aim and tendency and effect of that legislative policy, if it could be adopted, would be not to perfect and develop our great railway systems of communication, but to bring us back to the disjointed and fragmentary and separated and warring elements we had ten years ago.

What ought we to do? Not merely recognize an inevitable tendency, but recognize the great public advantage of these railway combinations and then control them.

Let me put it in another way. Let me remind you of the fundamental difference which there is between combinations in the industries and in railway service; the difference is fundamental, gentlemen. It is fundamental in the constitution of society, and in the Constitution of the United States, when it comes to actual property, the things which we eat and use and wear, the products of human labor and skill; why, we do not want uniformity of price, if we can help it.

We want every producer to be perfectly free to get the most he can for everything that he has to sell and every purchaser to be equally free to buy everything as cheap as he can. That is, we want the utmost freedom of contract between buyer and seller in the exchange of property, and in the freedom of that contract rests industrial liberty. It may well be that those industrial combinations which have for their purpose temporary or permanent restraint upon that freedom of contract, either by limiting production or controlling prices, or anything of the kind, are against public welfare, and ought to be prevented if they can be. But when you come to railroad transportation, you have an entirely different situation. It is a public service. It is not a matter of contract at all, as I said to you the other day. You do not ride upon the cars as you buy flour, by contract, but you ride on the cars and have your property transported in the exercise of your political rights, and you do want uniformity, and if I am compelled to pay for a public service one sum and you get it at a lower sum, my political rights have been invaded.

I have been denied the protection which the Constitution undertakes to guarantee me, and if I could have my way I would have the prices of railroad transportation as certain and unchangeable as the price of postage stamps. I do not mean unchangeable from month to month or from year to year, but for the time being, as between man and man; and I would make it impossible for an Armour, or a Rockefeller, to get a car load of freight carried any cheaper than the humblest cross-roads merchant.

And to repeat what I said yesterday, for I am very much impressed with that, there is no influence which will so operate to bring down

railroad rates as the absolute maintenance of railroad rates. When you have the conditions which have heretofore prevailed, and which must prevail more or less under the competitive system, a railroad will yield to the powerful shipper, to great combinations, and hold up its rates as to everybody else; but when the big shipper, the largest company, can not get one mill off the rate, you have the approval of everybody to bring down the rate.

Let me put it in another way. What is at the bottom of our apprehension and our alarm as to these industrial combinations? Why, I suppose, I believe that it is the apprehension that they will so use their power and the degree of monopoly which they get by their combination as to extort from the public fairer prices than would otherwise prevail. Now, we can not reach the price of property; you gentlemen can not fix by legislation the price of sugar or cotton ties or flour or anything else—steel rails, for instance. So what do you try to do? You try to prevent the combination out of which those high prices result, because that is the only thing you can do. You can not go to the end you want to reach and control the sum which the consumer would pay, because that would far transcend your constitutional powers; so you try, and so the State legislatures try, to accomplish your result, or some measure of that result, by the indirect method of putting every obstacle you can in the way of combination. And I am not making any adverse criticism upon those laws, either State or national; but I want to contrast with that the railway situation.

When it comes to that, you can go right to the end in view and control the price. You have not got to resort to any indirect and unsuitable methods. The price of the thing in question is under absolute control. You can fix railroad rates. You can do it through the Commission, and you have absolute control over it, so that for the very reason you may be opposed to industrial combination you ought to be in favor of railway combination.

I am talking too much, gentlemen.

Mr. STEWART. We are very much interested, Judge.

The CHAIRMAN. Judge Clements, would it suit your convenience to be heard to-morrow morning?

Mr. CLEMENTS. Yes, sir; any time it suits the committee.

The CHAIRMAN. I have been notified that certain representatives of the railways will be ready to be heard on Tuesday, and if we can get through with the balance of the subject by that time we will do so. If not, we will give you such time as you need.

Mr. CLEMENTS. I certainly do not expect to take more than an hour and a half.

The CHAIRMAN. If it will suit you, we will be pleased to hear you to-morrow at half-past 10 o'clock.

Mr. CLEMENTS. Very well.

Thereupon, at 12.40 p. m., the committee adjourned until to-morrow, April 25, 1902, at 10.30 o'clock a. m.

WASHINGTON, D. C., *Saturday, April 26, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

**STATEMENT OF HON. JUDSON C. CLEMENTS, INTERSTATE COMMERCE COMMISSIONER.**

Mr. CLEMENTS. Mr. Chairman, I think I will be excused for speaking generally for a few moments, although it is not my purpose to go into the general question to any great length. There are some features of the general subject of regulation which ought to be referred to in connection with the practical details, which I suppose it is the object of the committee and of all of us to get down to, and only so far as I think necessary for a proper consideration of those will I refer to the subject in general.

The magnitude and importance of these questions and the difficulties and complexities surrounding them are not to be wondered at, and they are sufficient to caution anyone who approaches this subject, either from the standpoint of legislation or administration, against overconfidence in being able at once to formulate suitable and effective legislation in all particulars.

There are men living who were born before there was a mile of railroad built in this country, and yet we now have nearly 200,000 miles. It is a business which reaches everybody, touches every other business, and upon which everybody is more or less dependent. This immense property has been constructed under public franchises which have authorized the promoters to take private property for public use upon the theory that they perform a public service, and therein this business is distinguished in principle, fundamental principle, from the ordinary private business in which men engage without public regulation. Another feature distinguishes it, and that is that every railroad is of necessity to most people a monopoly. There are several roads for the same people at the trade centers. There were formerly more than there are now, since modern combinations have been perfected; but after all the great body of the people who need protection from injustice most are those who can patronize only one railroad.

Hence long since has grown up the idea that it is perfectly correct and necessary to regulate this business. It has more to commend regulation than many other things that have been regulated. From the beginning in this country it is a matter of history that public authority—legislative authority of the States, at least—has always regulated the tolls at grist mills, over turnpikes, and monopolies of that sort in which the public are interested, in which it was believed that the public was entitled to fair and equal treatment as between man and man. It is true that is a small matter now as compared to this business. It was an important matter, however, in the former days before railroads and the steam mills and merchant mills that have been brought about at trade centers; it was a vital matter then, and the public authority did not hesitate to regulate it on the sole ground that it was a monopoly, though a private business. In addition to the fact that the railway is a monopoly to most people there is the further

fact that it was created only by grant of public authority for a public purpose, to take private property in order to do the public business.

But I will pass from that question, because it is settled by judicial interpretation that there is competent authority and adequate reason, both, for regulation.

Sometimes when these matters are presented those who oppose regulative legislation speak of it as a great innovation, as revolution, as something unheard of, and therefore I have made this reference to these matters. For a long time the people of the country got along without any demand for regulating railroads, although they had the authority in the Constitution, formed long before a road was built, for that purpose, and upon which the present law was enacted. But the warfare between railroads and between rival communities and markets and products had not been made so sharp that there was necessity for regulation.

The roads were far apart; they were separate lines. They had not formed these aggregations, and great trade centers had not been built up by the facilities of the railroads, and therefore the necessity for regulation for a long time did not exist, and for a still further time the sharpness of friction and warfare and strife between communities and individuals in business and carriers was not such as to make imperative the demand for legislation such as resulted in the passage of the present law, which was enacted in 1887. But for ten years before that time it was a matter of public agitation. It was before both Houses of Congress for about that time, and this law was the fruit of that agitation and contention.

It is not strange that Congress at that time did not make a perfect law. It was a great field, a great subject; there were great interests, great difficulties involved. It was tentative and experimental, and two years later, in 1889, following the provision of the statute which requires the Commission annually to report to Congress and make suggestions as to needed legislation to perfect the law, certain recommendations were made, and Congress took it up again and amended it in several particulars, one of which was to include the shipper under the criminal provisions of the law. He was originally not under the criminal features.

Another provision then added to the law was one making it a crime for a shipper to underbill or misdescribe the products he shipped so as to cheat the railroads by marking a package a certain kind of freight which would go at a low rate, whereas it was a higher grade of freight that went at a higher rate. Those were two important provisions put in at that time at the instance of the carriers and recommended by the Commission. They thought that was just and went toward making an adequate law protecting both interests with impartiality.

Since that time there has been practically no amendment to this law; none, I might say, except the supplemental act which relates to the matter of taking testimony, which grew out of what is known as the Councilman case.

It has been now about thirteen years since the law was overhauled in the particulars to which I have referred. The Commission has in obedience to a requirement of the act year after year made suggestions as to what it thought was necessary to give effect to the purposes of the law, and, as you well know, has annually provoked a campaign of criticism, which has already been referred to on the part of those

who undertake to defeat the proposed legislation by charging the Commission with greed and anxiety for unlimited power. I will not waste time on that. I think the committee understands that this Commission, acting officially and under oath, has no interest in the matter except to endeavor to carry out its duties faithfully as time and experience show them to be. That is what it is trying to do.

I will present a few figures which relate to the subject in general, not for the purpose of arguing from these that rates are or are not reasonable, but for the purpose of emphasizing the extent, the magnitude of this matter and the questions involved in it, whether viewed from the standpoint of the carrier or that of the shipper.

The gross earnings of the carriers, the railways alone, not including the water carriers, for the year ending June 30, 1901, were \$1,578,000,000. This is equal to more than \$4,000,000 a day for every day in the year. It equals about \$175,000 an hour for every hour of the twenty-four in every day. The increase shown in these gross earnings from operations for the year 1901 over the year 1899 amounts to \$265,000,000, which is an increase in two years of over \$3 a head for every man, woman, and child in the United States.

The gross annual receipts amount now to more than \$21 a head for the whole population, or \$105 for every male adult, supposing there to be one in every five of population.

Now, of course a large proportion goes out as fast as it comes in, in the way of expenses of operation. Therefore I have said that I do not use these figures as applicable to the question of the reasonableness of rates, but I present them to emphasize the importance of the subject and of the questions that arise under it, because it is not to be conceived, in a business so large as this, conducted by so many people, where the carriers are left to fix their own rates, with reference to their own earnings, that the result of it will be that rates will in all instances be just and right and equal to everybody. It is impossible to conceive of such a state of things with such a result so long as humanity is what it is. Railroad carriers are made up of the same kind of people that the shippers are and every other class.

Mr. STEWART. What percentage on the supposed capital invested were those gross earnings?

Mr. CLEMENTS. The capitalization as it stands is about \$11,500,000,000. That includes bonds, stock, and every class of so-called capitalization.

Mr. STEWART. About what percentage would the gross earnings be?

Mr. CLEMENTS. The gross earnings would be something like 14 or 15 per cent; but, as I say, something like \$10,000,000 go out for operating expenses. There would still be left over \$500,000,000 to go for other purposes. Not quite all of that is available for dividends and interest, however; but something like 4½ per cent is available for interest on bonds and dividends on stocks.

That is about what it figures down to in round numbers. After you take out expenses for operation, and taxes, and other matters that are proper to come out, there is still left some 4½ per cent, or between 4½ and 5 per cent, on the present capitalization, or about that. That includes the interest on funded debt and bonds, as well as the dividends on stocks. But the substantial ownership of railroads is largely in bonds. When you come to consider this, it is unfair to take simply the amount of dividends on the stock and say that is all they earn in

the way of profits, because in many instances the roads have been built by the bonds, and the stocks represent no investment. It is impossible to say what percentage is so.

It is shown in some cases that when a carrier has been paying a 6 or 7 per cent dividend for several years and it still has earnings that will permit more than that, some form of liability is issued. I have in mind now one instance of that kind particularly where the specific thing to which I refer was done—that is, there was handed around to every stockholder an equal amount in certificates of indebtedness to the amount of his stock, and the so-called indebtedness to draw 6 per cent a year. That differs only from a mortgage in that it can not be foreclosed. But it is one device to take up whatever might be left without reducing rates. It goes into this capitalization of \$11,000,000,000, or something over that, that exists now. Roads have been built within my own knowledge where the money that built and equipped them was paid in dollar for dollar to the amount of only the first-mortgage bonds. Then, in addition to that, the holders of the bonds were given an equal amount of stock, for which they paid nothing.

Mr. STEWART. That is substantially watered stock.

Mr. CLEMENTS. Yes, sir. There is no doubt much of that in this capitalization, and notwithstanding all of that and the many ways in which similar things have been done there is still available for the year 1901, including surplus, something like what would pay 4 to 5 per cent on the total capitalizations, covering stocks, bonds, etc.

The United States collects in customs duties, or did for the year ending June 30, 1901—the same year to which I have been referring—\$238,000,000; from the internal revenue, all sources, \$305,000,000; miscellaneous sources, \$41,000,000, making a total of \$584,000,000, which is little more than one-third of what the railroads collect in a year.

Still, I wish to repeat that I refer to these figures now only to show the magnitude of this matter and to illustrate and emphasize what I believe must be admitted by all, and that is that so long as the carriers doing this business, immense as it is, are allowed to fix their own rates upon their own considerations, looking to their own interests, as all men do—they are not peculiar in that respect—it is not to be assumed that every shipper will have a just and reasonable rate to ship upon. In the scramble for gain such a conclusion as that would be unreasonable. Hence the necessity for some middle moderate course to take care of both sides in respect to what is just and reasonable.

If either of you and I have a controversy about accounts, for instance, or anything, and we can not agree about it, you do not try the case; neither do I. We are all bound in the society of government, in order to guarantee justice to both sides and all, through the instrumentality of public tribunals—impartial, just, and fair. That is the theory of our whole Government. It is declared in the first section of the act to regulate commerce that every rate shall be just and reasonable, and that every rate that is not so is unlawful and forbidden. We are told that this did not create any new law; that it only disclosed what was common law. But if it was common law—and I concede it was, at least in respect to a reasonable rate—why was it put into a section of this act? Did that make it any more the law than it was before? Not at all. It was declared there for the reason that,

although common law, it was nothing but a beautiful but dormant principle which had never had substantial application.

The shipper could not go into court because he had been charged five, one, or several dollars too much on a single shipment and maintain a suit which would cost him a hundred dollars or more in the end, even if successful, and in contest with a great corporation, with its salaried lawyers, who are paid from one year's end to another to take care of all its cases. The individual could not cope with his adversary in such a fight as that and get redress, although he had a theoretical remedy at common law. I challenge anyone to find a recorded case in any court which ever gave back to a man one dollar because he had been charged more than a reasonable rate.

It is practically, I repeat, only a theoretical remedy. It is mockery to tell a man in such case that he has his remedy in court. It is worse than giving a man a stone when he asks for bread. He can not avail himself of it. The record shows he never did. The reasons why he did not are apparent to every man.

Well, why did Congress declare the principle of the common law in the first section of this act? Manifestly to give it some vitality. They followed that declaration up with other provisions intended to give it effect, for left alone it does not amount to anything more than a last year's spread-eagle declaration of a political party. We come together in party assemblies from time to time, and after sufficient "whereases" each denounces everything pretty much the other has done and seeks favor by popular declarations sometimes too general for practical realization. To leave the declaration that a reasonable and just rate is lawful and any other rate is unlawful, unsupported by some method to give it effect, is worth no more than one of these campaign declarations, practically. Hence it was followed up with all the sections, the whole of which simply provides certain things to be done to give effect to that fundamental declaration that rates must be reasonable and just. Now, they do not give effect to it. After an experience of fifteen years they fail to do it.

Of what use is it to require the carriers to file their schedules, publish and print them, and the Commission to collect reports and publish them, and to do all the other minutiae of the things required to be done in this act by the Commission or by the courts in the way of procedure, investigation, and things of that sort, if after all that is done it is still left where it was before, for the carrier to fix his rate, enforce it whether reasonable and just or otherwise, and there is nobody to hinder him?

I will not say that the public investigation of these questions has not been of value in general. It would not be true to say so.

I will not say that the varied and constant correspondence conducted by the Commission in respect to complaints of discriminations and unreasonable rates presented by letter to us and disposed of in that way has not been of benefit. We do the best we can to present to the railroads reasons why there should be an alteration here or there in such cases, some of which suggestions are complied with and some not. In the same way the carrier's side of the question is presented to the shipper. I will not say that all of this is utterly worthless or that it has not accomplished a good deal of improvement in conditions. After all, however, the substantial thing that was aimed at is largely a failure, and that is the correction of a rate that is wrong.

For what intent are individuals, associations, firms, and corporations authorized to file complaints with the Commission? For what intent is the Commission required to serve notice on the carriers complained against, institute an inquiry, have a hearing, and make a report thereon? It is the rate that is complained of. The rate is the basis of all of these controversies. Sometimes there is a question of discrimination in respect to such a matter as not furnishing cars to one shipper, while they are furnished to other shippers; but these are rather minor matters compared to the one continuing thing that is the subject of complaint, and that is the rate. It all goes to the rate. The amount you pay, or the amount which you pay as related to what other people pay, that is the controversy.

Now, it is not of much value to make a lot of regulations about one thing and another and still leave that question untouched. To regulate all around the one thing which is the cause of the trouble and leave that unregulated is unprofitable. This brings me to the question as to the authority of the Commission in respect to a rate when it is complained of and investigated, and I shall not dwell upon that. It seems to me that the statement of the whole matter suggests of itself that if there is to be any remedy it must be authority in some board—somebody. It can not be a court, because the Supreme Court has decided that the fixing of the rate for the future is a legislative act, and courts can not legislate under the Constitution. Therefore it must be done in one of the ways that Congress has said. Congress itself must fix the rate or authorize somebody else to do it in a limited way, if it is to be fixed at all.

Now, if the time has not arrived that we are convinced it is right and just under proper safeguards and limitations to give a certain limited authority to fix by review the rate which the railroads have first fixed, then there is no use to do anything more than has been done. I want to read to you the utterance of a distinguished railroad lawyer in an early case before the Commission. To get down to where the friction comes in a controversy is the best way to get at the question. A complaint was made of the unreasonableness of rates on coal in Pennsylvania, and Mr. Johnson, then and now, I believe, counsel for the Pennsylvania Railroad, which was a party to the case, said in his argument to the Commission:

You must fix this rate under the testimony in this case, and not upon the argument of Mr. Gowen; for while he gives you his experience as a railroad manager, that can not help you unless it is in accordance with testimony given under oath and under the sanction of cross-examination. Under the testimony only will you be justified in saying that these rates are so extortionate as to demand your interference. You must fix the rate to be charged. Mr. Gowen sees the difficulty which will beset you in doing this, and he therefore says that he does not ask you to fix rates, but only to say that the present one is unreasonable. He tells you that after you have said this, and after you have established the principle that before the carrier names his rates he must consult with the shipper, "these people" will come together and fix the rates themselves. That will not do.

If this Commission says that the present rates are unreasonable, they must say so because there is a different rate they have determined to be a proper one. It will not do for you to make a general finding and to say "The present rates are unreasonable, but we do not know what they ought to be. We can not fix them for you. You must agree upon them amongst yourselves." If unreasonable, say to what extent they are unreasonable; whether to the extent of a cent, or of many cents, or of a dollar a ton. Would it be proper for you to lay down an abstract principle that would lead to endless confusion in the application? That would put all at chaos. For Heaven's sake do not ever make the matter of the proper rates for car-



rying coal one to be regulated in a conference between the carrier and the shipper. If you have been convinced by these petitioners that the present rates are unreasonable and unjust, then say what the rates ought to be. This will be your duty.

I read this not for the purpose of offering an apology for the interpretation of the statute by the Commission as then constituted, with that recognized jurist, Judge Cooley, at its head, but I read it for the now more important purpose of illustrating the inefficiency of the act as since construed. For Heaven's sake, says this eminent counsel, if you condemn this rate it is because you have in mind an idea from the testimony of what is the proper rate. Now, when you condemn this, say what the other is; but do not turn it over to the shippers and carriers for another controversy, and another and another, with endless difficulty and confusion. Suppose the rate complained of is a dollar, to use an illustration which was used by a member of the committee yesterday, and the complaint is that it is excessive to the extent of 20 cents, and it is alleged that it ought to be not over 80 cents; that this is reasonable, and anything above it is unreasonable.

Then the Commission serves the complaint and takes testimony, and after a careful examination of several months and with several hundred pages of testimony of numerous witnesses, railroad officials, and all interested, takes into careful account all the circumstances and conditions that can be ascertained pertinent to the matter, and with deliberation—not with the haste of a court-house proceeding, but with all the time that is necessary to devote to it for a careful consideration and consultation—reaches the conclusion that 90 cents is a reasonable rate. If the shipper is entitled to a just and reasonable rate, he is entitled to it to-day and all the time. He is entitled to it to ship on, not for a cause of action to recover \$5 on some shipment he made last week, which he can not go after at all. How is he to do business on the chances of recovering back the excess? What he needs, and what the law declares him entitled to, is a rate which is just and reasonable which he may use and ship under.

Well, now, if under the present law in the case just assumed the reasonable rate stated was ascertained by the Commission and so found, all that could be done would be to condemn the dollar rate. If 90 cents is all that is reasonable the ninety-first cent is just as unlawful as the one-hundredth cent. The ninety-second is just as unlawful. And hence it was that the Commission, with Judge Cooley at the head of it, determined away back that when the Commission found that a carrier was doing any act prohibited under this law, ordering them to cease and desist from that act went as much to one part of a violation as to another, and that the inhibition applied as well in the case stated to the ninety-first cent, which was 1 cent above that which was reasonable, as to the one-hundredth cent, which was 10 cents above; and that the violation of law found was in charging any part of the excess, and therefore it was competent to make the orders it did make, which were as broad but no broader than the violation. So much for that. I have presented it not by way of criticism of any decision, but for the purpose of illustrating the necessity of ascertaining what is the reasonable rate, as well as what is the unreasonable one, so as to give effect to what is a shipper's declared right under this law.

Now, is that any great hardship? Doubtless you will be told by some of the gentlemen, but not all of them, whose property is to be regulated—that is, if it is to be regulated; I do not know whether it

is or not—that this is unnecessary. Of course they do not want to be regulated any more than they can help; that is natural; that is the way you would be, and the way any of us would be. We think we can trust ourselves to do justice to everybody, and, therefore, we do not need any regulation. That is humanity, but that is not society. Society can not rest on any such principle as that.

The CHAIRMAN. May I interrupt you with a question which is pertinent here?

Mr. CLEMENTS. Certainly.

The CHAIRMAN. I wish you would tell the committee if it was authorized to establish a rate what would be the elements of cost of transportation that would enter into your calculation in determining that rate. It is a comprehensive question, but I think it would be beneficial if some one with experience and authorized thereby to speak would tell us of all these elements of cost. What would you look to, what would you look at on the part of the carrier, in the expenses and all of that?

Mr. CLEMENTS. The Commission has in several cases made orders of that sort, and while I can not stand here and offhand repeat all the elements that have been suggested from time to time in all these various cases, I do recall some of them, perhaps the principal ones.

The CHAIRMAN. If you could give them to us I would like to have them all, as they have appeared in your experience, and if you would rather answer the question on Monday, after thinking it over, very well.

Mr. CLEMENTS. I can answer in a general way I think now, and if it occurs to me later on that I have omitted anything I may make further answer.

The CHAIRMAN. If you please.

Mr. CLEMENTS. One of the things that would be considered is the distance and the charges made for like distances on a like freight in other parts of the country. Another is the value of the freight, because you can not lay as much charge per ton per mile on a load of straw as on a load of gold dust, and you have to take into account the value of the property shipped, the risks incurred by the carrier, how much he would have to pay in the event it was burned or lost and he became liable for it. You would have to consider the weight of the article in comparison with the space it would occupy in the car, because the carrier can put perhaps three times as much or four times as much grain into a car in bulk as wagons or buggies set up or some agricultural implements which take a good deal of space and yet do not weigh so much—furniture and things of that sort.

And you must take into account the expenses of the road, its condition, its financial condition, so far as you can ascertain it. It is all fraught with varying details and difficulty; there is no doubt about that. And after all, the best that any railroad man can do now or pretends to do, the best that any other man or the Congress or a commission can do, is but an approximation, because there are so many varying conditions and articles. They must be classed, and yet if you classify at all you must put a lot of articles into every class that are not exactly alike in these respects to which I have referred—of bulk, weight, value, and space required in a car. Therefore it is that on some articles a road can earn less per ton per mile than upon others, because if it charges on the lower grades of freight the same rate per ton per mile that it does on the higher grades it would be prohibitory;

the articles would not be moved at all. Therefore they are bound to take into account what the traffic will bear, and by that I do not mean to say that they are authorized to go as high as it will bear; but in considering whether they will carry the article at all or not they must consider whether or not there is any profit to them after paying the expense of the movement of that freight.

All of these are matters that must be taken into account. The Supreme Court said, in the Nebraska case, I think, where a State undertook to fix the rates on all articles on all roads, that it must take into account the bonded indebtedness and the other indebtedness, of stock and its value, market value, what the roads earn. They must not be confiscated—that is, no rates must be made which would leave them no profit.

But to illustrate some difficulties about these matters. You say you must take into account the value of their stock. The value of their stock depends on what rates you will permit them to charge, and so you get into a circle when you come to consider it from that standpoint.

Mr. STEWART. To fix rates on agricultural implements, would not this be the process: You would first ask that if the company were engaged entirely in the transportation of agricultural implements whether the reasonable rates fixed would give them sufficient earnings on the capital invested? Would not that be the process?

Mr. CLEMENTS. I presume so, if that were all they were hauling, and yet of course that case could never arise in practice, because they all engage in carrying a great many kinds of freight.

Mr. ADAMSON. Under legitimate conditions their property may increase in value and they would be entitled to profits on real bona fide value whether it cost that much or not. Mr. Stewart asked you in regard to the cost. If its value increased, they are entitled to the bona fide value, are they not?

Mr. CLEMENTS. Yes, sir.

Mr. ADAMSON. Sometimes that happens without watering stock?

Mr. CLEMENTS. Undoubtedly.

Mr. ADAMSON. In all kinds of property?

Mr. CLEMENTS. Undoubtedly. I would not think that the original investment was the only thing to go upon.

Mr. STEWART. My question was this: In order to arrive at whether a rate was reasonable on agricultural implements, would you not have first to ask that if the company were engaged entirely in the transportation of that article, whether the rate would give them a reasonable earning on the capital invested?

Mr. CLEMENTS. I presume so. If that were all they were doing and you found out the basis upon which they were entitled to earn, whatever that might be, that until they had earned something more than a reasonable return you would not be authorized to reduce it.

The CHAIRMAN. If fixing or estimating value of plant and you allow any sum for the franchise, would you consider the value of the franchise?

Mr. CLEMENTS. Well, Mr. Chairman, I hardly know how to answer that question. It is probably one that has never been considered by the Commission, certainly not within my knowledge except as the franchise may be bound up with the tangible property.

Mr. COOMBS. For instance, in California the franchise is taxed; it is considered taxable property. It is taxed very heavily, so much so that

the railroads have been fighting it; but I think it has been established that it is taxable property. Would you consider that an asset?

Mr. CLEMENTS. I should say the road was protected in this, that before you undertake to reduce their revenues you consider what tax they have to pay on their franchise and their property and on all these things they pay on.

The CHAIRMAN. In this estimate of value, would you take into account what is known as good will?

Mr. CLEMENTS. Well, Mr. Chairman, I would not know how to measure that in any way except as it expressed its value in the value of the property. I reckon that an element that enters in; I would not know how to measure it, how to estimate it separately. It shows itself in the value of the stock, whatever there is to that. The road that has a good deal of good will, a high reputation and high standing, has high-priced stock.

The CHAIRMAN. But there are many persons who insist that stock and bond valuations are not proper criterions to be looked to in performing the duty of fixing a rate.

Mr. CLEMENTS. Not alone, no; I agree to that.

The CHAIRMAN. I want to know whether or not you can tell me whether these matters of franchise and of good will are, to your mind, or would be to your mind, in performing this duty, elements of value to be considered in considering the aggregate value of the plant?

Mr. CLEMENTS. I do not think they are entitled to any consideration except so far as their value is shown in the stock and property itself.

The CHAIRMAN. But if you abandon the method of ascertaining value of taking stock and bonds, if you abandon that method, then would you not consider the separate elements of value?

Mr. CLEMENTS. Undoubtedly.

The CHAIRMAN. Would that include, in your mind, then, value of franchises and value of good will?

Mr. CLEMENTS. It is rather a new question to me; but I suppose if you eliminate the consideration of the stock and all questions of that sort you would appraise the property upon the same terms that you would other property, and in that way the good will necessarily shows itself in the value of the property. The franchise and the property are bound up together; it is all one earning thing; speaking generally, one is not available without the other—that is, for railroad purposes.

The CHAIRMAN. There are a good many persons who do not agree with you, who say that in making estimates of this kind, ascertaining value of this kind, the value of the franchise, the value of the good will, are not to be considered. I have read much on that subject. Now, I would like to know if you were to be intrusted with this power of fixing a rate, where you must consider value of plant, whether to your mind these particular elements of value are to enter into your computation?

Mr. CLEMENTS. I do not see how they are to be left out on that basis, if you abandon the stocks and go to the tangible property.

The CHAIRMAN. Excuse me for interrupting you.

Mr. CLEMENTS. That is all right; it is rather a novel question to me, but speaking on the spur of the moment I do not know of any better answer to make than that. Of course if the Commission had ever been intrusted with or assumed that it had the power to make rates, initiating rates on all traffic, we would have been confronted with that

question long ago; but never having assumed that power, and only believing that we had the power to correct the rates complained of in particular instances by review, that question has not come up.

Mr. STEWART. The railroad companies in making up their assets upon which they calculate their earnings do not value their good will or their franchises at all, do they?

Mr. CLEMENTS. I do not know that they do. They take into account their stocks and bonds and so on.

Mr. STEWART. And therefore the Commission, in finding whether the rate was just or unreasonable, would not have to take into account the question of what their franchise was worth?

Mr. CLEMENTS. I think so, on the basis suggested. The chairman's question had reference to eliminating a lot of those things.

Mr. STEWART. Do not the railroads eliminate it now?

Mr. CLEMENTS. But they take into account their stocks, and the chairman's question was based upon the idea of eliminating that and going to the value of the tangible property itself, ignoring the stocks and bonds and all those things, and it was in that view I said what I did.

The CHAIRMAN. In fixing a rate would you consider the fluctuation in volume of business from one year to another; or, in other words, in fixing a rate in what was spoken of yesterday as a fat year, would you take into consideration the fact that last year had been a lean year or next year might be a lean year?

Mr. CLEMENTS. That requires me again to say that in respect to all these matters, whether we consider rates originated by the carrier or corrected by a commission or arranged by a railroad association, the best that can be done is approximation; to deal with generalities and approximate what is just and right, all things considered. There are too many details, too many particulars, too many differentiating circumstances of time and place and value, to make it possible to do it in any other way except upon approximation.

Now, that brings me to say what I think would be a right and proper thing in regard to these fluctuations of which you speak, and I am very glad you asked the question at this point, because it will enable me to refer to some things which I was going to defer but might as well speak of now.

Undoubtedly, any substantial, important change in these matters is one that would be considered, and ought to be considered in a determination of what is reasonable and right, because you can see at a glance by the figures that I have referred to here that whereas the earnings for the year 1901, ending June 30 of that year, were \$1,578,000,000, for the year 1899 they were \$1,313,000,000. Making a difference of \$265,000,000—about as much as you collected in the whole year from the tariff on imported goods. The difference alone, that is, the increase shown in 1901 over 1899, was \$265,000,000.

Mr. CLEMENTS. Whereas the receipts from customs were \$238,000,000, what did you ask?

Mr. ADAMSON. Were the disbursements for 1901 more than they were in the year 1899? They are somewhere near a fixed ratio.

Mr. CLEMENTS. The increase of expenses was \$166,000,000; the increase of receipts over earnings was \$265,000,000.

Mr. ADAMSON. There is somewhere a fixed ratio, then?

Mr. CLEMENTS. Approximately so, somewhat. These figures show

\$100,000,000 more increase in the earnings than there was in the expenses in these two years.

What I was about to say in answer to the chairman's question about fixing rates in reference to fluctuations in earnings and so forth was this: A few years ago the tonnage was not near so great as it is now, and the earnings were less. Expenses were less then than now. Naturally they are more now, to handle a bigger volume of freight. But you can not vary the rate; neither can the Commission or the railroads vary the rate with every monthly or frequent fluctuation, or one that affects some articles and does not affect business generally. Reasonable stability in rates is desirable alike for the public and the Commissioners. Rates can not be stable at all, whether made by the railroads or a commission, on constant fluctuating changes in the value of property or the volume of business. That is another case for the exercise of reasonable, fair judgment, so as to arrive at something that is approximately just.

I remember a few days ago seeing in the newspapers of Washington that the cabmen of this city had applied to the District Commissioners for authority to increase their rate of 25 cents for hauling a person a certain number of blocks, and they assigned as a reason therefor the fact that the price of hay and corn had gone up so it took more to feed a horse now than before. Another reason they assigned was that whereas for hauling a person they were entitled to charge the fixed rate of 25 cents for so many blocks, and 50 cents for so many more blocks, that in some instances they were required to go 10 blocks after a man, and then to take him to a place that he wanted to go, the depot, for instance, and then they would have to go back again to their stand, and that in view of the actual distance traveled, and in view of the greater cost of feeding their horses, they ought to be allowed to charge a higher rate. But that request was refused by the Commissioners, the authority of this District, acting under the law of Congress. You can not lay down an exact rule about such matters except the general rule of reasonableness and fair play.

This regulation of cabs and street cars in Washington is interesting in connection with the contention that to give the Commission the limited authority to review the rates made by the carriers, for the purpose of correction, not creation, is said to be revolutionary, radical, unreasonable, and dangerous, and yet right here in this community of 300,000 people, the capital of the United States, by authority of Congress the Commissioners of this District are authorized and that without a hearing to fix a schedule of rates for the cabmen of this city, to say what they shall charge you and me, so as to protect us when you get off the car at the depot, for instance, against an exaction of \$1 where the rate ought to be 50 cents. Now, if this little business in this city, as between these men who stand around in eager competition, lifting their hands to you, saying "Here's a carriage," "Here's a carriage," bidding for your business, if under that competition, I repeat, in a little matter like this there is justification for the arbitrary fixing of a schedule of rates on this business, how infinitely more important it is in respect to this greater business of the railroads of the country that the individual, the shipper, should be protected in the rates he pays.

Now, if we take the advice of those who say that the fixing of the rates by review and the correction in promotion of justice, of a rate

which the carriers have made is revolutionary, confiscatory, destructive, radical, and therefore not to be permitted, are we not straining at a gnat and swallowing a camel when we set up this regulation for the cabmen and street cars of this town? You regulate their fares. Is there any possibility that you can be so badly hurt and oppressed by the rates of these local carriers here where they are in competition as that the man out in the country, dependent on one road for transportation, will be subjected to a worse injustice? Take the man who lives on one road and has no choice as between roads in respect to moving his crop. He may sue in the courts for an excessive charge, we are told. Well, one judge—a circuit court judge in Iowa—has decided that the law fixes the published tariff rate now under this law as the rate conclusive, and if you have paid the published rate and then complain that it was unlawful and sue for the excessive part of it in a court, that you can not recover it because the law has said that the carrier shall make the rate and publish it, and when published he shall collect it.

Not that he may do it. It is a crime for him to remit it after he has published it. He is guilty of paying rebates if he does so; he is guilty of a criminal offense if he takes less than his published rate. He is not only permitted to collect it, but he is required to collect, and he is a criminal under the law if he does not collect it. And yet shall the law be left in such shape that a man must go into court and complain that he has paid the rate which it was a crime on the part of the railroad not to collect after it is published? According to the decision referred to there could be no recovery in such a case if the rate collected was the published rate, however unreasonable. But if this decision be erroneous and the amount of excessive rates collected be sufficient to justify suit, now who is it that can collect in a case in court. Take the grain men of the West or the cotton men of the South, who grow the corn or cotton, as the case may be. At the end of the harvest, or soon thereafter, these men sell their crop to a local buyer. He sells it to Mr. Councilman or Mr. Richardson, or some other one of the great grain dealers in the West, or, if cotton, to dealers in the South. And what do the local men pay for it?

They pay a price which is based upon what he is authorized by the person with whom they are dealing. That is fixed by the market price of the grain in Chicago or in the markets of consumption farther beyond in the case of grain, and they get that price or thereabouts less the freight rate that is necessary to take it there. The grain man sells at a price which is based on the published rate, and suppose after that a complaint is made and upon investigation it is found by the Commission first, and then the courts, that that rate was unreasonable by 3 or 5 or 2 cents. The shipments have all been made, the crop has been moved, practically, and the bills of lading have been made out in the names of the dealers, not the farmer, the man that bought the grain shipped it.

In the bill of lading his name only appears. He paid the freight. The farmer did not pay it; the cotton man did not pay it; each bore the burden of it, however; but the dealer paid the freight, having shipped the grain and cotton. Now it is determined that that rate was unreasonable by two or three cents, and the court sustains that finding. Who is it that recovers back the difference, supposing anyone can? It is not the farmer, who has parted with his crop based upon the higher

rate. He has no standing in court or before a commission or anywhere, because he had no transaction with the railroads. He did not ship anything. He has no bill of lading, he has no expense bill showing what he paid, and he has no standing anywhere, and yet he is the loser. But who can recover in such a case? The middleman or the dealer who bought it and paid for it at the lower price. He has the freight bill, the bills of lading, and if anybody can recover he can. He has already had his profit in the transaction.

These are illustrations to show that there is no protection, neither can there be any protection, to those entitled to and needing it in these matters unless you fix the reasonable rate beforehand, so that he need not pay more than the reasonable rate nor sell his products on the false basis of an import rate. If he has no remedy until he has shipped, then he has none at all, practically. Hence the necessity of fixing the rates for the future.

Now, is it so unreasonable that such a thing should be done? Not for a commission to sit down and write out and promulgate all the rates for all the carriers. That is done in a good many States, as you well know. There are 20 States in this Union now whose commissions, or public authority of some sort, fix rates for the carriers in respect to State shipments. Within all these late years I remember only three or four cases that have gone to the Supreme Court (one was from Nebraska, one from Texas, and one probably from South Dakota) in which the carriers have charged that the rates fixed by the State commissions were unreasonable, confiscatory, and unlawful.

With all these 19 States—I included above Virginia, which has just adopted a provision in its new constitution, although the constitution is not yet in force—there are only a few cases where the railroads have had occasion to resort to the courts to stay the rate-making power of the States on the ground that it was unreasonably or unjustly exercised.

Now, the record does not show any rash haste or disposition on the part of any public rate-making power to make unreasonable or unjust rates, where they have the full power to make the rates out and out. There is no such thing as that suggested in any of these bills or in any reports or suggestion of the Commission at any time. It is not an authority that anybody need covet for the purpose of exercising it. It is full of difficulties, but after a great deal of thought and experience about this matter, I respectfully submit that it is the only way in which you can protect the shipper or producer, because to give him a remedy of back action to recover either puts it in the hands of the middleman who has no right to recover, as he has the only standing in court and the producer has none in the one case, or else it requires such a multitude of suits to recover little amounts that it is more expensive than it is to submit to the wrong and bear the loss.

So you will find, when you turn this question over and look at it from every standpoint as long as you will, that there is no way where carriers make unjust rates to protect the other side except to correct that rate, not simply by condemning the one that is wrong but by substituting the one that is right.

Now, where is the hardship in this? The shipper is entitled to a reasonable rate. The carrier is entitled to a reasonable rate. Each one is working for his own interest, naturally and properly. The carrier says that he is capable of making a rate that will be just to his patrons, that he will not oppress them; but can you leave the shipper



in his hands with safety? Human experience says no. You will not permit the carrier to make the rates. Now, what else does the conscience and the mind go to except some natural, reasonable, fair-minded course such as we resort to in all other matters of controversy? That is, to have a court—which you can not have in this case, because it has been decided that this is a legislative power when it relates to the future. That eliminates the courts.

Mr. STEWART. New Jersey has no public debt or no State tax whatever. Her entire revenues are gathered from the railroads. Our railroad commission fixes future rates, does it not, on the railroad traffic in that State?

Mr. CLEMENTS. That may be; I am not aware of a commission in that State.

Mr. STEWART. Has there ever come a complaint to the courts on account of the unfairness of those rates?

Mr. CLEMENTS. From New Jersey?

Mr. STEWART. Yes.

Mr. CLEMENTS. None that I have heard of and call to mind.

Mr. STEWART. If that is so in New Jersey why could not this commission fix rates without difficulty?

Mr. CLEMENTS. I must confess that all of these matters are important and that there is more or less difficulty; but this is done, and I see no other answer but that it will be more fairly done by an impartial tribunal, whether you call it a commission or a congress, that has power to do it, than to let it be fixed by either the shipper or the carrier in his own interest. Of course, it would be wrong for the shipper to make the rates, because he is an interested party. So, too, why should the carrier make the rates? He is an equally interested party. Now, if the railway is just like a wagon and a horse, if it is nobody's business, and every man should make his own trade and do the best he can, then leave it where it is; but if there is anything in the doctrine and declaration that the shipper has certain rights on the ground that this is a public service, under a public franchise, which is put beyond controversy by the decisions of the Supreme Court, and now admitted by all parties, then it is a different case, and why should there be any question that there should be some power to make an adequate and just correction of the rate made by the carriers when, upon due inquiry, it is found to be wrong?

Suppose the Commission should be eager for the exercise of power, and go pell mell, making rates so as to injure the roads, the roads would do what they have done in the Texas case and in the Nebraska case and in the Dakota case—ask the courts to protect them under the law against an unlawful rate which the Commission has made. They have equal protection under the law. It is not confiscation; it is not a question of that sort. Where can the injured shipper or producer go and secure like protection with like promptness? As it is now it reminds me of a game some boys were playing as I passed along the road once. They were playing some game and one boy asked: "What is the rule of this game?" "Every fellow for himself and the devil take the hindmost," replied one of the boys. That is the situation in which this business, immense as it is, is left in the present scramble, for two reasons—first, there is no power to correct the published rate, and, second, no practical power to prevent deviation from the published rate whereby one man gets a rebate while the general public does not.

Now, these are the two principal defects of the law: It would be unreasonable for the shipper to dictate the rates, and it is equally unfair for the carrier to do so without the power of correction somewhere.

The Supreme Court has said in one of these cases that was before it, in which it did not approve the conclusions of the Commission in the long and short haul feature, that the carriers have the right in the first instance to make their rates; not finally, but subject to review by the Commission and the courts. The principle is recognized. The court said in the very case in which it held that the law did not authorize the fixing of a rate by the Commission to take the place of the condemned rate, that Congress had the power to regulate by fixing the rates itself or to delegate that authority to the Commission. It having done neither, the authority was not found in the act by implication.

Now, as I say, the courts are open; carriers have the same protection there from an unreasonable rate made by the Commission that everybody else has for their various rights under the law. The question was asked yesterday, and probably one the day before, in respect to the exercise of this authority in regard to several rates or several classes between one State and another, different States, and if there was not some way in which to limit the jurisdiction of the Commission in a particular case to some smaller scope, some smaller field. I appreciate the motive of that suggestion as having in view a possible compromise by which to get something in the direction of what is right. But I have thought a good deal about it, and I see no practical way in which a limitation of that sort can be applied and make the law efficacious. For instance, the remedy ought to be as broad as the evil, and in some cases the matter complained of has been the adjustment of the rate on all classes or on a large number of them.

Take, for instance, the action of the official classification committee at the first of the year 1900. Alleging that the expenses of operation, railway materials, bridge materials, cars, and the things that go in to make up cars, and labor, cost to the roads more than they had previously cost. They said, "We were justified in making more revenue." It was not a blind way of going about it; there was no deceptive way of going about it. What they did was to bring their classification committee together, and that committee represents all the roads of the trunk lines from the Ohio River to the Great Lakes, covering a number of the most populous and strong States of the Union, in which the classification applies. They came together and fixed up classification No. 20 to take the place of classification No. 19, and they increased the rates on something like 700 or 800 articles, by taking them out of the fifth class and putting them into the fourth class, out of the second and into the first, and so on—that is, from one class to another.

We received several hundred complaints within a week about this one matter. The roads fixed upon these numerous and substantial increases, so far as the public was concerned, without any notice. I do not mean to say that some isolated shippers here and there did not know that they were going about it, but there was no official notice; there was no notice to the public; there was no right on the part of any shipper to be heard. I do not say that some shippers may not have been permitted from time to time to talk to some member or members of the committee and present their views, but there was no public right for any man to enter and make suggestions about it. It was a transaction

wholly within themselves, except so far as they, or any one of them, permitted some shipper to talk about it to them. They made these increases, averaging about 31 or 32 per cent on all of these articles by this change of classification. Up to about the 1st of March following the complaints had been so vehement and so numerous that they revised their work and so changed it as to reduce the increase to about 20 per cent above what the rates had been before.

Now, what would you do with that kind of a transaction if you had limited jurisdiction? If you were limited to the consideration of a complaint on a particular commodity between two places, what would you do? They substituted the higher classification for no purpose except to raise the rates. We called upon them on the complaint of these hundreds of shippers, the members of the committee were sworn, and they testified that their reason was to get more revenue, and in doing it they looked for the things that would bear the increase best. Do you suppose there was no wrong in all of that to any shipper anywhere? If they are incapable of doing a wrong thing, if in the performance of their work in their own interest for gain they are incapable of doing injury to the shipper, then we need no law; but if in all this multitude of things they did—upon which three months later they confessed that they had done wrong so far as to correct a whole lot of it, and do you suppose there was no imperfection left in it, no injustice left?

If there was there ought to be a remedy for it. If they are incapable of doing wrong, then there is no remedy needed. But assuming that there was any injustice done, how can you get at it except to apply a remedy which is as broad as the act which they did? Now, what has followed? Under the law as it is complaints can be made. These several hundred complaints I speak of were by telegraph and letter. They came all at once, a flood of protests against it. We took testimony a day or two from the people who made the complaint and the carriers, and sent it to the Attorney-General on the request of some of the complainants, who insisted that the thing done was a violation of the antitrust law. The complainants wanted to proceed against the carriers that way, and it was upon request we sent it there. He stated in a written opinion that it was not a violation of the antitrust law. So you see how they were able to act together. There were about 65 roads that were included that used that classification. The committee was composed of fourteen or fifteen members, and they got together and revised this whole schedule of their rates.

MR. STEWART. Did he admit it was a violation of the interstate—

MR. CLEMENTS. He did not say; he said in substance it was left to the Commission to do what it could under the interstate-commerce law.

MR. STEWART. Did he discuss the Sherman law?

MR. CLEMENTS. Yes; but he did not discuss it except to say that this testimony did not show a violation of the Sherman antitrust law, and, therefore, these complaints were thrown back to seek protection under this law or submit. Several of them filed formal complaints. Proctor & Gamble, of Cincinnati, complained of rates on soaps. I wanted to go into that a little—not the merits, but the nature of the controversy merely—to answer the question that was asked the other day; but it is 12 o'clock now, and you may wish to adjourn.

THE CHAIRMAN. You can go on now or go on on Monday, just as you please.

Mr. CLEMENTS. Very well. Proctor & Gamble are soap manufacturers near Cincinnati. They filed a complaint because the soap had been changed from one class to another, raising the rate. And the Hay Association of the country filed a complaint, which was to the same effect. Suppose the jurisdiction of the Commission was so limited. As suggested, Proctor & Gamble had complained of the rate from their factory near Cincinnati to Chicago, in order to correct the rate on soap to Chicago, and then they had to file another complaint on each road leading to Cleveland, and another on each road leading to Buffalo, and so on to every part of the country. What the carriers did was to raise the rate by raising the classification on soap on every road using that classification, which was sixty-odd, not only between Cincinnati and Chicago, but between each place and every other place in that territory. Now, you see at once that the only possible way in which you can deal with the question to give any relief in a lifetime is to deal with it just as broadly as the carriers do.

If complainants are entitled to any relief, they are entitled to relief as broad as the wrong done. Take another case which was tried a good many years ago. It is the one in which the Supreme Court decided that the Commission had no power to fix a rate. The carriers were complained of by the freight bureaus of Chicago and Cincinnati on account of the rates from those two cities to certain points in the South, and it was shown among other things in the investigation as follows. I read now from the findings of fact by the Commission in that case:

At the convention of the Eastern and Western lines in 1878 it was announced by Mr. Peck, general manager of the Southern Railway and Steamship Association, that the Western lines "concede that the transportation of manufactured articles into the territory embraced by the association should be left to the Eastern lines, and to undertake by prohibitory rates to prevent such articles from Eastern cities reaching association points over their lines." Accordingly a basis of rates was then adopted, by which rates on the Western lines for articles peculiar to the East were to be at least 10 cents higher than the rates on the Eastern lines, and rates on Eastern lines for Western products were to be at least 10 cents higher than the rates on Western lines.

Now, they fixed up a whole lot of agreements there. They declared openly then—that was before there was any antitrust law—that their object was to divide the traffic between the Eastern lines and the Western lines, and there are numerous provisions in the agreement here shown to that effect, declaring, for instance, that the lines leading through the Ohio River gateways shall exact full locals and not carry at other rates in respect to any shipment that would come to them over a line that would not agree to those rates. They made a line from Buffalo down by way of certain towns to Pittsburgh and Huntington, W. Va., and they said that whatever originates east of that line must go to the South by the Eastern roads, and not the Ohio River crossings; and whatever originates west of that line must reach its way to the South by the Ohio River gateways and not by the Eastern lines. And they fixed penalties, and they fixed it so it took unanimous consent to change the arrangement, and that no rate should be changed by the individual roads; that each road should collect full locals in certain cases; and then they fixed another line in the South which could not be crossed by these respective carriers, in the transportation of this great traffic, so divided.

All that is cited in this case, and they made it apply to the six

broad classes of freight, general merchandise, etc. The declared object of that was set forth then—because there was no law against it then except the common law—and they continued that right on down until the decision was made in the case of the Joint Traffic Association, and the same adjustment continues to this day, because this decision of the Commission was not put into force on account of the fact that the Commission undertook to find and fix the reasonable rate, and not only found that the rate the carriers had made was unreasonable, but substituted the other rate for it, and those rates fixed by the carriers were made on the basis shown confessedly 10 cents higher one way than the other way in order that the traffic might be divided for the declared purpose of allowing all of the carriers to get the greatest net revenue out of the business as a whole.

These rates were made for that purpose on that basis, and it was these rates that were challenged by the freight bureaus of Chicago and Cincinnati, and after the question was tried by the Commission the Supreme Court never passed upon the question; neither did the circuit court of appeals pass upon the question of the reasonableness of the rates found and prescribed in the order made, except it was beyond the authority of the Commission to make it, because it fixed the rate for the future.

There is a case where they came together in association and fixed up the division of the territory, both North and South; they said what should go by the Ohio River and what by the Eastern lines down into the South, and it was declared to be for the object of allowing the Western lines to carry to the South such things as hay and grain and the products that were peculiar to the West, and to allow the Eastern roads to carry imported goods, merchandise and things that were peculiar to the East.

Now, the former conditions as to place of production and manufacture have changed. Manufacturers have gone to the West. Chicago has become one of the greatest manufacturing cities, and yet she is farther away by the rate than New York is from these towns in the South. So this adjustment has not been changed in any material respect in twenty years, and it was built for this declared purpose by the members of the old Railway and Steamship Association and their associates, the railway carriers in the East and the West. It is all set forth here. And yet it is said because the rates which they declared should be higher from the West to those places in the South than from the East, in order to effect this division and obtain for all of the carriers the greatest net revenue out of the entire business, the thing which stands to-day—the agreement, of course, is gone—the agreement is not in writing anywhere any more as it was, but the practice appears to be the same to-day; at least, the rate adjustment is the same. And now the distance is disregarded. Changed conditions are disregarded.

The declared purpose, then, the principal thing, then, as they avowed, was to get the greatest net revenue to themselves out of the traffic. They had been having rate wars and contests, and so when they settled that they divided the country into territories, and they said in effect, "You take that and we will take this." Now, where does the shipper come in—the producer, the community? If a thing of that sort is done for the sole purpose of gain to the carriers and there is no remedy to correct what they do if found wrong, then there is no remedy for the shipper. If they do any wrong in a matter of that sort, the remedy

should apply to what they have done. They did not do this by piecemeal; they did not do it on one article between two places; they did it in respect to the whole territory on six classes, on that adjustment, and which, I repeat, is the same to-day as it was then, substantially fifteen or twenty years ago.

Take the rates from Meridian, Miss., to Chicago, a distance of 723 miles. On the first class the rate is 1.34. From New York, a distance of 1,142 miles, it is 1.24; 10 cents less from New York than from Chicago, the distance being much greater from Chicago. Distance does not alone control in these matters, but here are the plain declarations of the purpose in this matter, and it was shown that it was with a view of dividing the territory, dividing the business, suppressing the competition so as to get the greatest net revenue for each of the carriers out of it, to stop fights. That was the adjustment. It was made with the purpose of permitting the greatest revenues to the carriers. Now, where is the shipper's voice in that?

MR. STEWART. Would not that condemn, then, the system of pooling?

MR. CLEMENTS. I think so.

MR. STEWART. That would be an argument against pooling.

MR. CLEMENTS. I think so. I have different views about pooling from the views of our friend the chairman. We hear now about the progress we are making, and that we are finding out that many of the old notions we used to have are untrue; they are blasted and found groundless, and we hear that they ought to be overturned. I do not believe in it all. This is a progressive age, but I think sometimes we lose sight of old principles which never change, and that we would ruthlessly and thoughtlessly overturn them to our hurt if we are not prudent. I bought a book once, and on the first page I found, "Times change and men change with them, but principles never." I do not know whether it has application to this case or not; but I do know that for hundreds of years the courts, without as well as with statutes condemning monopolies, under the English law, the common law, as transplanted in this country founded on common justice and common sense, and the perfection of wisdom, which is what we used to understand law to be, have found and declared that monopolies are injurious to the public; that human nature was yet too imperfect and too selfish to be trusted.

When we have aggregation and monopoly, so that the consumer and producer are in their hands, we can trust that they will deal justly with them without law. It would be a long stride in my judgment at this time for Congress to say—that is for you to consider, however; but as the question has been presented here it is not out of place I suppose for me to say—it would be a long step in the way of progress either in the right or wrong direction, and I think it would be the latter, to say that which to-day in the eyes of the common law is condemned on the ground of public policy, and it would be unlawful without a statute against it; not only that, but it is condemned by the act to regulate commerce passed fifteen years ago, and made a crime; not only that, but it is condemned and made a crime by the Sherman Act of 1890 and made a felony to do these things—that we now go with one plunge, by one bound clear over the fence, reverse the order and say it shall not only be permissible, that it shall not only not be against the law, but it shall be lawful; it shall not only be lawful when you have done it but the courts of this country shall be set up

to give it force and effect, so that which to-day is a crime must be set up and enthroned to-morrow as a thing to be commended and enforced.

Now, that is a long ways to go at one leap. I think there are other ways to stop these evils.

What would pooling do? What do the roads want with it? Does anybody suppose for one moment that they want it for any other purpose except to increase or make more sure their revenues. If they are greatly concerned about the discriminations between the shippers they have it in their power to stop them; but you are told one road can not stop it and let another one go on. There is a good deal in that. But there is a way, I think, to correct that practice. I do not think it will be questioned that the primary object the roads have in bringing about pooling is to enable them to increase their net revenues. How? They say in part by eliminating the competition between themselves.

If they divide the business then they won't have to have soliciting agents and other agencies which they now maintain; and you must see at once that the economy in saving to the carriers that there would be in respect to these minor matters would be comparatively immaterial. There would be some, undoubtedly, but it is no great factor in the matter. The principal things in view, I apprehend, are, first, that it would enable them to get rid of the payment of rebates, making cut rates, etc. Therefore they would then collect the published rate from everybody, and I do not think that it is without reason to apprehend that they would do what they have done in the past; that they would undertake to get the greatest amount of net revenue that they could out of the business, and therefore they would eliminate competition and put up or at least hold up rates. Why should they not? Does not every man put up rates when he can in his business; does not every man take about all he can, whether he is selling shoes or hats or wheat, whether he is a farmer, a merchant, a manufacturer, or a railroad man?

I am not indicting the railroads. Their management is made up of the same kind of men as that of every other business. But their business is peculiar. The public is in a measure in their hands, and hence the trouble. They want more revenue. They do not think they get enough. They would have it in their power to get more. Again, I have not seen a pooling bill around here yet anywhere that did not authorize them to contract not only with one another, but common carriers generally, including, of course, water lines. I have not seen any limitation in any bill that railroads should only be authorized to combine with railroads. They may combine with common carriers without limit. The Congress will appropriate, probably this session, millions of dollars to clear out and deepen the water in the rivers and harbors, to promote commerce mainly, and will at the same time authorize these already great financial giants to go on with their combinations and put not only the railroads that were in competition heretofore together, not connecting, but competing lines, into one management, one system, and then to go to the lakes, the rivers, and harbors, and combine with the steamer lines. These are great questions, and sometimes it seems like we are disposed to go too rapidly and too blindly.

Mr. COOMBS. Do you think the Government would have a right to regulate fares on steamships?

Mr. CLEMENTS. I should think so. In fact, there is no limitation in the Constitution if they are engaged in commerce between the States.

Mr. COOMBS. The question of eminent domain does not enter.

Mr. CLEMENTS. The constitutional provision is to regulate commerce between the States and Indian tribes, etc.

Mr. COOMBS. That is regulating commerce; I understand that.

Mr. CLEMENTS. That is what I mean. Is there anything that would hinder Congress from regulating the lines on the Mississippi River?

Mr. COOMBS. I do not know whether it is necessarily implied in the power given to Congress to regulate commerce.

Mr. CLEMENTS. I supposed it was. I have always supposed it was. Congress has not undertaken to do it in respect of rates for the manifest reason, I suppose, that the river is anybody's highway and not that of a monopoly.

Mr. COOMBS. That is the difference between a railroad and a river. The railroad can invoke the sovereignty of the State and get a right of way; it is a quasi public institution.

Mr. CLEMENTS. If the public authorize it; yes.

Mr. COOMBS. Yes. Now, the river is open to everybody, but it is opened and controlled by the United States. The same element of sovereignty, you might say, does not enter. The railroad is exercising a sovereign right when it gets its right of way.

Mr. CLEMENTS. Yes.

Mr. COOMBS. Now, that same rule does not obtain, you might say, in reference to the right of a man traveling on the highways of the sea, on the water.

Mr. CLEMENTS. Well, the Government has the control of all these waterways within the country and the harbors, and it is expending a great many millions of dollars to make them available to commerce, and now is it going to give an affirmative authority here to enable the carriers by land to make such contracts with the carriers by water as to make these part of a monopoly, too?

Mr. COOMBS. I simply asked that question.

Mr. CLEMENTS. I am glad you did. I think there is no question about the authority of the Government, and I think, after all, the greatest protection that this country, the world, has against unreasonable rates for transportation is the waterways. Surely, I think it would be wise to hesitate about giving over the waterways of competition also to combine with the railroads, if combinations are to be authorized.

It was said yesterday by my friend, the chairman of the Commission—he has his convictions strongly as I have mine, and we do not agree about this. I do not believe the sovereign remedy for rate cutting discriminations is pooling, and that it is the only remedy; nor do I believe if it is adopted it would not result in evils as great as the one we attempt to cure thereby.

The tonnage is so great that if you were to increase the present rates of the railways the amount of 1 mill per ton per mile, which is equal to an increase of 1 cent for carrying a ton 10 miles, which, while it would seem at first glance a small matter, it would result in a net increase of \$150,000,000, in round figures. With sufficient concert among carriers, as we have seen, it is not impossible nor very difficult to increase rates. Will they not do it? Will there be no temptation to do it? Are the people absolutely safe against any such result as that? And when you go to correct it we have pointed out the difficulties encountered. Suppose they have made a slight increase on a great many things so that



the gross increase amounts to \$150,000,000 in the way I speak of, and if wrong in whole or in part where is the remedy? If upon complaints correction were attempted, you would no doubt hear what Judge Prouty told you of the other day in one case we have been hearing—that the increase was so little on a ton of freight of the kind there in question—50 cents or \$1—that the question was asked, Who cares about it?

Why should the Commission waste its time in dealing with a question like that? The consumer, we are told, does not care whether he pays 50 cents more for a ton or not. The work of the Commission ought to be on broader lines, it is said, than to consider small, trivial matters like that. And yet on that product the increase will amount to several million dollars upon the whole. How easy it is to move up the rate a little on this, a little on that, and yet make the increase so slight that it would seem hardly worth while to deal with it in a particular case.

We are told, when we come to deal with it, that it is a trifle. When the matter gets in court it is asked how you can tell whether a given amount—say 90 cents or 93 cents—is a reasonable rate. What mathematical rule can you lay down? What demonstration in mathematics can you apply, like you can count the interest on a note or bond, and say up to this notch it is lawful, but above it is unlawful? You can not. You can not, with like certainty, demonstrate the reasonable rate. The railroads do not do it; they do not try. Nobody can do it. How easy it is then with power to make all rates, competition eliminated, to make slight increases here and here and all around, and then, when they are challenged, who can say which is reasonable—90 cents or 93 cents? It is a matter of estimate; it is a matter of approximation at best. Who is right, now, in such a case—the railroad or the shipper, each insisting on a different rate, or the Commission, which determines on a different one still?

These are some of my objections to that method of removing this evil, because I think if you remove the one you erect another.

There is, further, no assurance that all the railroads would pool if they were permitted to. There is no way to make them all pool, and who can say that it will be a remedy for cutting rates? The only benefit which the roads can offer to the public in this concession of the right to pool is simply that they will thereby get rid of what they have not been able to get rid of by any other means; that is, deviation from the published rate, discrimination by rebates. They say, "If you allow us to pool we will observe the published rates, because there will be no competing, or it will be so restrained as to induce observance of rates." These calculations might not work out. We do not know what influences would still work. This is not demonstrated as the sovereign remedy. There was a time before this interstate-commerce law was passed when there was no statute against pooling. They did pool, notwithstanding it was against the common law. It was not a crime. They could not enforce their pooling contracts. They did not stop discriminations then. There was no law requiring a published rate then, but there were discriminations then as well as now.

So it is not demonstrated at all that this is a sufficient and conclusive remedy.

Upon the other hand, if it fails to do what you want it to do and at

the same time increases the rates, then you have two evils instead of one, and you have not corrected any.

It was said yesterday by our friend the chairman, I think, in substance, that these two laws—the antipooling law and the Sherman antitrust law—had, strange to say, resulted in the bringing about of the exact things which they were intended to defeat. I think that would be a little hard to demonstrate—that these two things were responsible for the present conditions. I believe, Mr. Chairman, that you and I both voted for these laws, and if the chairman of the Commission is right, what fools we mortals must have been. Now, I do not think the present conditions relative to trusts and combinations of all sorts are solely due to these two acts. These things were going along and growing at a rapid rate. Here were two efforts to check them. They have failed.

The chairman also says (I have no doubt he thoroughly believes it, and I am not saying this in any criticism, for our relations are most cordial) in substance that these laws are not obeyed, are not lived up to, that they can not be, and therefore they must be absurd and unwise. What he says amounts to a declaration that they have not been enforced. If they have not, who can say what the effect would have been if otherwise. Returning now to one of the particular provisions of the bill before you, a suggestion was made the other day by Mr. Mann that if you enacted this law in respect to making it a crime to receive a rebate on the part of the shipper.

I think the law should make it a good deal harder for such shippers, so they would not be so apt to take rebates. If instead of a fine of \$5,000 the shipper who takes rebates was made in each case a fine never be less than the amount of the rebates he got, then it would be a more dangerous business for him to take them. If you put it so that he shall not profit by the violation of the law, then he is not apt to violate it; but what does it amount to to pay \$5,000 in a fine and get five times that in rebates? The fine in every case ought to exceed the unlawful profit of the transaction whether against carrier or shippers.

The CHAIRMAN. The offense would be committed, would it not, when one shipment had occurred?

Mr. CLEMENTS. I suppose that would be so, but a man might ship a whole train load of grain or beef and the rebates amount to a large sum. He could take a bill of lading for 50 cars as well as for 1 car.

Now, it was suggested by the gentleman from Illinois (Mr. Mann) that an individual who did not know the rate might get caught and be given trouble. I do not think it is necessary for us to apprehend that the law will be used to reach the innocent. We can of course, in respect to any proposed legislation, imagine cases that are possible where the innocent might be caught, but there is no real substantial danger in respect to these matters at all. During all the years that this law had been in force there has not been an instance of that sort. The guilty are not caught, that is the trouble, much less the innocent. And in order to stop the payment of rebates and the acceptance of rebates, and these unlawful discriminations, it must be made troublesome to those who do such things. It must be made expensive to them. So long as it profits the road more to pay the rebate and get the business which it bids for by paying the rebate there is a temptation to do it.

When you make them upon conviction, disgorge, and the shipper also, to the extent of the profit in the violation of the law, then there would not be any temptation to do it. I am sure there is no danger of an innocent shipper being caught. It is not the small shipper in the country or small town that gets the rebate. He complains more often of an overcharge which is above the published rate, and we are constantly having them corrected by correspondence, and reference to the published rates. Errors in rates, of course, occur, and the court can take care of these things so as not to involve a man who by mistake ships at less than the published rate, because it has been misquoted to him, or by mistake.

Mr. ADAMSON. If you catch an innocent man it would be easy to pardon him if the case was a plain one?

Mr. CLEMENTS. Yes; and he will not be prosecuted.

Mr. COOMBS. How can a district attorney make a distinction between two offenders, the shipper on the one hand and the railroad on the other?

Mr. CLEMENTS. In that case there is no offense.

Mr. COOMBS. Is he to prejudge that?

Mr. CLEMENTS. I should think so, to some extent. He does not draw a bill for everybody that comes in and represents a fact. It is his duty to find out; he is discharging a public duty when he makes a discrimination between a case that is a genuine, real crime, and one which is an oversight or mistake.

Mr. COOMBS. Where proofs are equal—

Mr. CLEMENTS. They would not be. Neither would I have the railroad indicted for a clerical error made by a clerk in collecting less than the rate. They do that sometimes. The court can take care of such questions as that. They will not punish the innocent.

We can find difficulties of that sort about any law by imagining extreme possibilities. Take an illustration. Under the operation of these laws, a few years ago railroads filed with the Commission what was known as the Joint Traffic Association agreement. The Commission thought it violated the antipooling clause of this law, and in the performance of its duty sent it to the Attorney-General, as required by the twelfth section of the act to regulate commerce, which says that the Commission shall enforce the act, and upon request of the Commission it shall be the duty of the district attorneys of the United States to institute and prosecute the necessary proceedings to that end, under the direction of the Attorney-General of the United States.

In that case we sent it to the Attorney-General asking that the guilty parties be enjoined and punished. I think Mr. Harmon was Attorney-General at that time. He instituted a proceeding in the court in New York to enjoin the parties. The case went through all the courts up to the Supreme Court of the United States, and that court, upon the face of the contract alone, without any other testimony, said it was a violation of the antitrust law. It did not decide whether it was a violation of the antipooling law or not. It took it under the other law and said it was a violation of that. The case was, I believe, prosecuted before the Supreme Court by Mr. Harmon's successor. There were 31 railroad presidents whose names were signed to that agreement. Thirty-one presidents; the most intelligent railroad men in the country had signed that agreement.

Mr. STEWART. What year was that?

Mr. CLEMENTS. That has been about, I should say, four or five years.

Mr. STEWART. Who was chairman of the traffic commission at that time?

Mr. CLEMENTS. Mr. Blanchard, who is dead now, was the executive officer of the association.

Mr. STEWART. Who succeeded him?

Mr. CLEMENTS. After the injunction they dissolved. Since that time they have had what is known as the official classification committee. Mr. Gill is at the head of that. They do not do, I suppose, now all the things that contract authorized them to do, and yet they do remodel rates and classifications affecting rates, as I have already said.

Now, to go on, as I was proceeding to say, there was not one of those 31 gentlemen indicted for signing that agreement, notwithstanding it was a violation of the antitrust law. There was the trans-Missouri agreement. That was another one that preceded this. I do not recall how many parties there were to that. It was decided in the same way by the same court. Nobody was indicted, nobody has been prosecuted in respect to either one of them. It was doubtless that these gentlemen had been advised by counsel that these were lawful agreements, and were presumed not to have intended to commit an offense.

Mr. STEWART. Was there an appeal taken from that commission, from that decision?

Mr. CLEMENTS. That was a railroad traffic agreement, you know; there could not be an appeal. I do not quite understand what you mean.

Mr. STEWART. Could not an appeal be taken from the decision of the traffic commission?

Mr. CLEMENTS. Oh, yes.

Mr. STEWART. Could not an appeal be taken to the courts?

Mr. CLEMENTS. Not an appeal to the courts.

Mr. STEWART. Were there not—

Mr. CLEMENTS. They had an appeal to a board of arbitrators, or some board of their own, but it was a voluntary outside affair. There could not be any appeal to the courts, you know.

Now, I mention this to show that wherever there is any doubt of the intent—of the criminality of a thing—the courts are not hasty to punish. In this case these are very intelligent men. They signed a written contract respecting a very important affair, and, for the reason named, doubtless, they were not prosecuted. That being so, surely the individual shipper who goes to a freight agent and asks the rate from one point to another, and accepts the rate the carrier gives him through his agent, is not going to be run down by the court and by a grand jury and petit jury if the agent who gives him that rate has made a mistake.

Mr. STEWART. Was not Vice-President Hobart chairman of that association at the time he was elected Vice-President?

Mr. CLEMENTS. He held some office in connection with it. It was shown afterwards, I think, that he was chairman of the board of arbitration. He was appointed by this association to arbitrate the percentages. They got pooling—that is, they got to dividing the business. Their contract did not provide for that.

There is another thing I think should be done. I refer to giving the informers a part of the fine in these cases.

There is no reason why that should not be done with reference to the railroads, and to the shippers, too. We hear it said that we ought not to encourage informers; we do not want to encourage a man to give information against his employer, etc.; but we have to do a good many things on the score of expediency to give practical effects to law. There is nothing wrong inherently in such provision. It has been resorted to and is resorted to constantly in many instances. There is now on the statute book, section 4273, provision in reference to the passenger transportation laws as to ships coming to this country; in which case the informer gets one-half the fine imposed for violating those laws, and in respect to carrying explosives on ships there is a fine and the informer gets half of it. That is resorted to to give protection to the public.

It seems to be necessary in some cases to do these things, and in respect to the navigation of streams there are certain regulations and laws and the informer gets one-half of the fines that are collected from persons violating these laws. There was a moiety law in respect to internal revenues, and the informers got one-half of that. That has been repealed. Rewards are offered to give effect to criminal laws in many cases.

Mr. STEWART. Is there any law in reference to overcrowding on ocean steamers?

Mr. CLEMENTS. I do not know whether there is or not. I should think there was, but I do not know.

Nobody defends rebates; nobody defends these deviations from the published rates; everybody wants to get rid of them except the man who receives them and puts them in his pocket. They are a small part of the people in number. It is not the little man in the country or the small town that is able to press the road so as to get rebates. It is the large shipper in a great commercial center, where there are several roads, and where there is scramble for the business. There is where these laws are disregarded. It is said that they are not malum in se, and that a violation of such a law does not affect a man's standing in the community, or in his church, or anywhere; that if a man can get a rebate it is all right for him to get it. And so they go. The railroads want to get rid of the rebates; they want to get the published rates in order to increase their revenue. I therefore suggest that if the informer shall have one-half of the fine, it will be one way to do away with the rebate.

It will be said that this will put the employer's clerks and his bookkeepers and the men who handle his money as spies on him, and that it would tempt them to reveal the facts. So it would; there is no doubt about that. Why do you offer a reward for the capture of a person who commits a crime? The governor of every State offers rewards for the purpose of interesting somebody who knows where the guilty party is, or of the testimony that will convict him. It may be an employee or somebody else. It promotes the ends of justice to do that, and the harm that would come of this would be insignificant compared to that coming to young men who are now employed by these great establishments receiving rebates, who are tempted to commit perjury when they are called before the Commission or before court. To

them it is the alternative of telling the truth and losing their employment or committing perjury.

I have seen them put to the test, and it is an awful alternative. There is infinitely more wrong that grows out of that condition of things to society and the country in that way than would ever come by reason of their revealing the truth in order to get half of the fine.

Mr. STEWART. Are those people church members?

Mr. CLEMENTS. Yes; some of them are. It seems to be so common that it does not interfere with their standing.

Now, Mr. Chairman, I have not much more to suggest about this. I think there ought to be authority to review upon challenge, upon complaint, the rate that is complained of, and that the Commission or somebody should be authorized—besides one of the parties to the controversy—to determine not only what is wrong, but what is right, and to give it effect; and not simply condemn what is wrong and leave the parties to scuffle it out, with all the delays incident. If all of a rate above 95 cents up to \$1 is unreasonable, then any part of it is unreasonable.

Mr. ADAMSON. You do not think there is any use for this circuitous appeal in this bill?

Mr. CLEMENTS. I do not see, myself; I do not think it is a radical thing at all—

Mr. ADAMSON. There is no limit to the number of times that you may set a rate and have it reviewed and set it aside. I think it would be better to put the order into effect unless the carrier can show the court that it is illegal.

I am not criticising the carriers' manner of managing their business. The laws are as they are, and railway people are actuated by the same motives that actuate other men. I am not arraigning them; I am talking of the condition of the law.

I think I have not any other important point I have omitted to talk about. There are a few practical things in regard to these amendments. I think the tenth section should be amended so as to keep in the shipper and the railroad, and to fix a minimum fine, and to fix it in no case less than the amount that has been obtained on the part of the shipper in respect to rebates that are paid, and to give the informer half the fine or recovery.

And then I think there should be an important amendment to the twentieth section. As it is now carriers are required to make annual reports to the Commission. But there is no time specified in which they are required to do it, nor do they incur penalties if they fail or refuse, and the reports are not required to be made under oath. The Commission takes them under oath and has a regulation of that sort, but it is questionable whether a party would be guilty of perjury when there is not a command in the law for an oath. It is an oversight in the law. I know of no carrier opposed to it, and I do not think anybody would object.

They ought to be required to swear to their reports, and they ought to be required to make them by the 15th of September each year. That gives them two months and a half after the close of the fiscal year to put it in form and send it to the Commission. As it is now the law does not specify the time. The Commission by order does specify the time; but if they disobey it or disregard or neglect it there is no penalty, and the result is that some important reports we do not get until after

January, until six months or more have elapsed, and it delays the publication and formulation of these reports in a way that is very undesirable. An accumulating penalty of \$25 a day for every day would correct the whole thing. There would be no hardship to the railroads about it. The reports would be promptly made and no penalties incurred.

I am very much obliged to you, Mr. Chairman and gentlemen, for your attention.

---

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
*April 26, 1902.*

**STATEMENT OF MR. JOSEPH NIMMO, JR., STATISTICIAN AND  
ECONOMIST.**

Mr. NIMMO. Mr. Chairman, I do not propose to range over the entire subject which you are now considering. I have recently written a pamphlet to which I have devoted three months of my time and effort. It expresses very fully my thought in regard to the particular phases of the subject to which I shall now invite your attention.

There is one matter of great importance, Mr. Chairman, which I desire to bring to your attention. I refer to action taken about a month ago before the United States circuit court at Chicago which has an important bearing upon the particular bill—the Corliss bill—which you are now considering.

It turns out that the act to regulate commerce has two arms, the right arm of the civil remedy and the left arm of the criminal remedy. The criminal remedy is provided in section 10, and the Interstate Commerce Commission has for the last fifteen years been working this left arm alone. The whole situation has been described to you by others, and I will not repeat it. It is very interesting. Recently the Commission seems to have discovered the efficacy of the right arm of judicial remedy provided in section 16 of the act to regulate commerce, and they have had recourse to that section in a case which came up before Judge Grosscup in Chicago in March last.

Judge Grosscup in that case said:

The question presented by this application is a new one and a very great one, and I will not pass upon it finally until there have been elaborate arguments on each side. If the United States courts, sitting in equity, have the power called for it will make them master of the whole rate situation, for an inquiry instituted by them to inquire whether the injunction has been violated or not will, much more readily than criminal proceedings, probe to the bottom of the railroad's doings. For my own part, I believe that railroad rates ought to be as stable as postage rates, so that every shipper would know, as certainly as the sender of a letter, how much it would cost him and the fact that no one else could send it for less. An injunction something like this has been granted in other cases, notably in the Debs case, but an important distinction between that case and this is that in the Debs case the things complained of were in their nature temporary, while in this case the injunction will be against conduct running continuously into the future. The interstate-commerce act has hitherto been ineffectively executed, but the taking of such power by the courts, as this injunction implies, might turn out to be the vitalizing of the act.

That is hopeful. I concur in all that the learned judge said in regard to the evils complained of. I have no comment to make on that. The injunction is a feature of the case which we may look forward to hopefully. The injunction will be against conduct running continuously into the future. That is a very cheering aspect of the case. As has been said, it will be a remedy for the future.

And Judge Grosscup says in conclusion:

The interstate-commerce act has hitherto been ineffectively executed, but the taking of such power by the courts as this injunction implies might turn out to be the vitalizing of the act.

There is thus a hope held out that after having expended its energies upon the criminal remedy for fifteen years, within a month the Interstate Commerce Commission has had recourse to the civil remedy. It might turn out to be the vitalizing of the act.

So the suggestion I have to make to you practically is this: If there is such a hope held out why not postpone legislation of this kind until you have seen whether this vitalizing is going to take place? If we have waited fifteen years to get at section 16, why not wait a little while in order to see how the judicial procedure under it will turn out?

There is another important aspect of this question, and that is that section 3 of the Corliss bill in effect takes the vitality out of this vitalizing section. I will not argue that. I think if you will read the first two pages of section 16 as it is printed in the ordinary print of the interstate-commerce act and compare that with the substitute which is proposed in section 3, repealing the former, you will see that it takes the vitality out of what Judge Grosscup called the vitalizing of the act.

Another point. The courts have no power whatever under this act to overrule a ruling of this Commission. In theory it may seem well to give this Commission this unlimited power, but to throw upon five gentlemen not only the power to say whether a specific rate is right, but to order a whole schedule of rates on a road, on a system of roads, and even on a great series of systems, is giving them a tremendous power. It is a great political power. With that power given to the Commission you would be besieged by claims in a way which you can hardly imagine. You gentlemen here know how you are troubled with claims and applications from your constituents throughout the country, asking for offices and clerkships and all sorts of favors. All that would be as nothing in comparison with what would ensue under this bill. It would be simply intolerable from the political point of view, however plausible in theory it may be.

The CHAIRMAN. Why do you say that there would be no judicial review? Does not the amendment provide specifically for that?

Mr. NIMMO. Mr. Chairman, excuse me for not fully discussing that aspect of the case just now. I state that to you as a fact. I have gone into this in the book I have recently written. That is the opinion of the best lawyer I have consulted. I have gotten the best legal view I could. In the Supreme Court decision in the maximum rate case the court held that it is one thing to inquire whether rates that have been made are reasonable—that is a judicial act; but it is an entirely different thing to prescribe rates for the future—that is a legislative act. In the Joint Traffic Association decision the Supreme Court decided that public policy is what the law directs. I think it is a principle well established that the courts will not overrule a law of Congress on the ground of its not being reasonable, or even on the ground that it violates an abstract principle of justice.

The CHAIRMAN. But has not the Supreme Court on several occasions held that where this legislative power was directly exercised by the legislature of a State in fixing rates that those rates were confiscatory and have set them aside?

Mr. NIMMO. Yes, sir. I will read right here from the pamphlet



already referred to my view on that particular point. That is the very focus of the whole contention:

While it is unquestionably constitutional law that no carrier can be compelled to carry freights at rates which are in effect confiscatory, yet a broad line of distinction lies between remunerative rates and confiscatory rates which in practice excludes the courts from the power to condemn any rate on the ground it is unjust or unreasonable. Without doubt the discretionary power proposed embraces the entire range of commercial profits which in practice justifies the construction and the operation of railroads. In a word, it is an autocratic and absolute power.

Now, there is a subject stated by Judge Knapp in regard to which I take issue with him on a question of fact. I think that in his zeal he has misstated a great fact. Judge Knapp declared that rates are exorbitant, and that they have not been reduced within the last ten years.

Judge KNAPP. I made no such statement as that.

Mr. NIMMO. The statement made was exactly this, that there has been no substantial reduction in rates during the last ten years.

Mr. KNAPP. I made no such statement.

Mr. STEWART. Judge Clements made that remark.

Mr. NIMMO. I want to be entirely right.

Mr. CLEMENTS. I made that remark in respect to the rate involved in the case I was then talking about.

The CHAIRMAN. It is not necessary that we discuss that matter.

Mr. NIMMO. I have the record here—

The CHAIRMAN. Our record will show what was said.

Mr. NIMMO. Judge Knapp said that there has been an apparent reduction in rates during the last year; that that apparent reduction, however, is deceptive; that it has been the result of the fact that there has been an enormous and disproportionate increase in the carriage of coal and other low freights. Am I right?

Mr. KNAPP. I said that.

Mr. NIMMO. That I deny. There is the issue of fact. I deny that statement by Mr. Knapp. Now I will come right to the point. Here I have compiled a statement. The Interstate Commerce Commission divides the railroads of the country into ten groups and works out a charge per ton per mile according to the statistics of the internal commerce of the country. I take the report of 1890 furnished me by the Interstate Commerce Commission, and also the one for 1900. Now, here are the rates, the charges for 1890 and the charges for 1900. This shows the reduction—16, 26, 21, 29, 24, 16, 22, 16, 28, 35, and for the whole United States 22½ per cent.

*Revenue per ton per mile charged by railroads of the United States, according to statistics of the Interstate Commerce Commission.*

	1890.	1900.	Reduction.
	Cents.	Cents.	Per cent.
Group I.....	1.373	1.152	16
Group II.....	.828	.613	26
Group III.....	.695	.546	21
Group IV.....	.844	.595	29
Group V.....	1.061	.808	24
Group VI.....	.961	.806	16
Group VII.....	1.360	1.064	22
Group VIII.....	1.152	.964	16
Group IX.....	1.303	.938	28
Group X.....	1.651	1.067	35
United States.....	.941	.729	22½

Here we see by the Commission's own figures that comparing data for 1900 with the data for 1890 there was a fall in the average rate in each one of the ten groups ranging from 16 to 35 per cent, and that the average reduction for the whole country was 22½ per cent.

So I am compelled to say that the recent declaration of Mr. Prouty at Chicago as to advancing rates is absolutely erroneous or that the data upon the subject published by the Bureau of Statistics and the Interstate Commerce Commission are absolutely erroneous.

The attempt is made to refute these figures upon the ground that there has been an inordinate increase in the tonnage transported of low-grade rates, such as coal and ores. But I have shown in this statement, which I desire to submit as a part of my remarks, that there is not a particle of truth in this assumption, the general increase of tonnage having been proportionately greater than the increase in the tonnage transported of iron ore and coal.

The data just given is not affected by changes of classification, as it embraces freights of all descriptions without regard to class.

Now I come to the statement of Judge Knapp that these reductions in rates have been due to the inordinate increase in the carriage of coal, ores, and other low freight, and I assert to you that the reverse is true, namely, that the increase in the freights other than coal, iron, and so on has been more rapid than the increase in the total of iron, coal, and other low freights. I make this diametrically opposite statement, and I base it upon the statistics of the United States Government, published in the statistical abstract of the mining resources of the United States. The total tons carried 1 mile on railroads in the United States increased in ten years 86 per cent, while the coal marketed and the iron ore produced, according to the statistics of the Geological Survey, increased only 74 per cent. That is, coal and iron. The production in those articles did not increase as fast as the increase in the general merchandise of the country.

As a special example, I have taken group No. 2, which embraces the States of New York, Pennsylvania, and Maryland, and compared them with Pennsylvania, West Virginia, and Maryland, three great coal-producing States, as to the amount of coal produced, and I find that the traffic on those roads of general merchandise increased faster than their traffic in the carriage of coal.

Now, in order to be specific, Judge Knapp made the statement to me verbally, and he has set me to work on these figures. I have written to six or eight railroads in different parts of the country, and I have brought to their attention this specific statement of Judge Knapp, and asked them if the rates I have read increased or decreased during the ten years.

There is one aspect of this case which seems to be lost sight of by Mr. Knapp. He says seven or eight hundred charges have been filed lately of increases in railroad rates. Here is a fact in railroad economics.

A classification or a schedule gets stale in about a year. This is a great and growing country; conditions are continuously changing, and so the classifications have to be changed. A railroad schedule may be all right to-day but it will be stale in about a year or two. This has been going on ever since we have had railroads. They have to meet, together occasionally and adjust their classification. I have asked cer-

tain gentlemen to send to you and let you know whether the average cost of charges on those things has gone up or gone down.

Gentlemen, this whole talk about exorbitant rates in this country is sheer moonshine; without any feeling of disrespect I say it is nonsensical. In March, 1898, Mr. Knapp, the president chairman, who is present with us to-day, said:

The question of excessive rates, that is to say, railroad charges which, in and of themselves, are extortionate, is pretty much an obsolete question.

The Supreme Court has in no case decided that a rate charged is in itself exorbitant, and I think I am not mistaken in saying that the question as to the reasonableness of any rate per se has never been proved in any Federal court.

In all these millions of transactions \$20,000,000,000 worth of property moves every year, probably \$25,000,000,000, and yet there has never been any rate which has been proven in a Federal court to be extortionate. The amount just stated is about twice the value of all the railroads of the country.

I next come to the question of discriminating rates. The question of discriminating rates was thrashed out in the Senate committee about two years ago. A resolution of inquiry, submitted by Mr. Elkins, who is now chairman of the Senate Committee on Interstate Commerce, was addressed to the Interstate Commerce Commission asking them certain questions about discriminating rates.

The Commission answered promptly, and this is about the result in all the United States during the ten years from April, 1890, to April, 1900. The total number of cases decided by the Commission was 180. The number of appealed to the court was 35.

The Commission was sustained in 4 cases; the Commission was reversed in 17 cases.

I now refer to something here which is highly commendatory, very highly complimentary, to the Interstate Commerce Commission. I like to compliment the Commission, because they are estimable men. In its last annual report the Commission says:

The great mass of complaints are handled and disposed of by the Commission by preliminary investigation and correspondence. The total number of proceedings brought before the Commission during the year was 340, but only 19 formal proceedings were instituted before the Commission, or only 1 in 18 of the complaints preferred. There were only 10 cases decided by the Commission during the year, or 1 in 34 of the complaints entertained. This admirable results indicates the high degree of perfection to which the railroad system of the country has attained. It is also creditable to the act to regulate commerce and to its administration.

Now, the efficiency of this law has been questioned and denied, but with this section 16 put in force it is going to turn out to be a much better law than anybody thought it was going to be. Here is a Commission that hears these cases, 340 a year, as a conciliatory body and as an arbitration body, and they settle informally 321 cases out of the 340 cases submitted to them. Where is there a court in the United States that has such success as that?

This is a sort of a demonstration. This Commission has been looking with disdain upon the most admirable feature of this law. That is its conciliatory feature, its arbitration feature. It has a power to settle things out of court, and it has succeeded admirably in doing it. Why, sir, I regard it as one of the ornaments of our civilization, and am proud that we have a jurisdiction here that can settle 19 out of 20

cases submitted to its judgment. But notwithstanding this great administrative success they come here and say that this law is weak, and that they are powerless. They are exercising the finest kind of power that was ever exhibited by a civilized government, and they are doing it successfully.

Mr. CLEMENTS. The gentleman says they were settled. They were not settled. In most cases they were disposed of by leaving the shipper right where he was.

Mr. NIMMO. In the book that I have written I have gone into the subject of secret violations of published rates with great care and have made these declarations:

First. It has steadfastly denied—

I am referring to the Commission—

that it is in any especial manner responsible for the prevention of rate cutting.

I want Judge Knapp and these other Commissioners to bring the facts disproving these statements.

Second. It has opposed any amendment to the act to regulate commerce designed to afford the Commission greater facility for the enforcement of the penal provisions of the statute.

In other words it has treated not only with disdain but with aversion that very feature I have been talking about, that magnificent feature of conciliation.

Third. It has been derelict in the discharge of duties with respect to the prevention of rate cutting.

I have referred to the proceedings of the Judge to prove that.

Four. The remedy proposed by the Commission is not applicable to the cure of the evil complained of.

And that is the reason why we have resorted to section 16, abandoned the criminal, and invoked the civil remedy—the right arm of the law, and—

Five. The remedy proposed by the Commission is misdirected.

Those are the five statements I make in reference to the secret violations of published rates, in reference to the Interstate Commerce Commission taking action in connection therewith, and I desire here to introduce just what I have said upon that subject:

The Commission has strenuously maintained that it is not responsible for the prevention of rate cutting.

By the second section of the act to regulate commerce every departure from tariff rates is expressly forbidden and is declared to be illegal. By section 6 it is provided that in order to compel every common carrier to publish and file with the Commission its tariff rates, fares, and charges the "writ of mandamus shall issue in the name of the people of the United States at the relation of the Commissioners," and section 12 provides that "the Commission is hereby authorized and required to execute and enforce the provisions of this act;" for which purpose the Commission is given the widest possible powers of investigation, including the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, contracts, and agreements and documents relating to any matter under investigation. The law distinctly provides that it may by one or more of its members prosecute any inquiry necessary to the discharge of its duties in any part of the United States. It has also the power to require every district attorney in the United States to prosecute all necessary proceedings for the punishment of violations of the act, and its findings in all judicial proceedings are made *prima facie* evidence as to each and every fact found.

Furthermore, it is provided by section 16 of the act to regulate commerce that if it is made to appear to any United States court "that the lawful order or require-

ment of said Commission drawn in question has been violated or disobeyed it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission and enjoining obedience to the same."

Notwithstanding these clearly prescribed powers and duties the Commission has, from the beginning, sought to repel the idea that by the act to regulate commerce it is especially charged with the duty of enforcing the provisions of the act against secret rate cutting—the paramount purpose of the act. In proof of the correctness of this assertion the following facts of record are adduced:

In its annual report to Congress for the year 1893, at page 7, the Commission declared that it "is wholly without authority as respects those discriminations between individuals which are made misdemeanors by that enactment," that "it is endowed with none of the functions pertaining to the detection and punishment of delinquents except such functions as may be exercised by private citizens," and (on p. 8) it deprecated the idea that it has anything to do with "uncovering the guilty transaction and bringing to justice those who engage in it."

In a letter addressed to Hon. William E. Chandler, a Senator of the United States from New Hampshire, under date of October 17, 1895, Hon. Martin A. Knapp, then an Interstate Commerce Commissioner and now chairman of the Commission, strenuously maintained that the prevention of the crime of rate cutting is a thing "with which the Commission has no power to deal." (Senate Doc. No. 39, Fifty-fourth Congress, first session, p. 14.)

For this and other declarations of similar import Senator Chandler administered to Mr. Knapp and to the Commission a sharp rebuke.

Mr. Knapp appears to have been then, as he has been ever since, laboring under the delusion that the duty of preventing rate cutting and other penal offenses denounced by the act to regulate commerce is incompatible with and beneath the function of revising all the freight tariff of the country, of prescribing rates for the future, and of determining the relative advantages to be enjoyed by competing towns, cities, and sections, and by competing industries throughout this vast country, a conception which he described in his letter to Senator Chandler as "my high ideal of the work in which the Commission is engaged," an idea which as I have endeavored to show is expressive of a malignant form of bureaucratic government, and as such utterly inconsistent with the governmental institutions of this country.

In its persistent denial of the fact that it is explicitly charged by the act to regulate commerce with the duty of preventing rate cutting the Commission flatly opposes its opinion to that of the Supreme Court of the United States. In the Maximum Rate Case (167 U. S., 479) the court said:

"It (the Commission) is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one against another; that no undue preferences are given to one place or places or individual or classes of individuals, but that in all things that equality of right, which is the great purpose of the interstate-commerce act, shall be secured to all shippers."

But, as before stated, in this as in other respects the Commission has not and does not to-day hesitate to oppose its opinion to that of the Supreme Court of the United States regarding the interpretation of the statutory or constitutional law of the land.

The Commission has repelled any attempt to give it greater power in enforcing the penal provisions of the act to regulate commerce.

Not content with a denial of its duty to prevent rate cutting the Commission has deprecated the idea of increasing its power to prevent the commission of misdemeanors, particular reference being had to rate cutting. On page 7 of the seventh annual report of the Commission is found the following declaration:

"But the main point to be considered is that Congress has no power to clothe the Commission, or any similar tribunal, with authority to execute the penal provisions of this statute, other than to aid prosecuting officers in procuring evidence against suspected parties."

And again on page 8:

"No amendment of this statute, therefore, is necessary or suitable with the view of giving greater power to the Commission in enforcing its penal provisions."

But when driven from the charges of exorbitant rates and unjustly discriminating rates as possible excuses for demanding of Congress autocratic power the Commission glaringly stultifies itself by seeking to secure amendment to the act to regulate commerce for the purpose of preventing rate cutting through an expedient which as herein shown is not only out of all proportion to, but totally inapplicable to the offense, besides being essentially revolutionary.

The repudiation by the Commission of responsibility for the prevention of rate cutting and its simultaneous effort to prevent any strengthening of its powers for that purpose which would be subject to judicial review clearly indicates its fixed purpose and desire to free itself of any sort of cooperation with, or dependence upon, the judiciary in the discharge of its official function.

The Commission has been derelict in the discharge of its duty with respect to the prevention of rate cutting. The Commission has neglected the duty of using its best efforts to aid in detecting and in bringing to punishment persons who have been guilty of the offense of rate cutting and other misdemeanors, a duty plainly incumbent upon it under the provisions of sections 2, 6, 10, 12, and 16 of the act to regulate commerce. This seems to be the result of the extreme aversion entertained by the Commission toward that class of duties.

In the fifteenth annual report of the Commission, submitted January 17, 1902, at page 8, appears the following:

"To convict for unjust discrimination it is necessary to show not merely that the railway company paid a rebate to a particular shipper, but it must also be shown that it did not pay the same rebate to some other shipper with respect to the same kind of traffic moving at the same time under similar conditions. As a practical matter this is almost always impossible."

The rule of law here stated by the Commission was announced by Judge Grosscup, of the northern district of Illinois, in a decision rendered June 20, 1896, in the case of *United States v. Hawley* (71 Fed. Rep., 672), with which case the Commission had nothing to do. It is as follows:

"This case illustrates that whatever difficulties there are in the enforcement of this act are not so much due to the law itself as to the failure of the prosecution to gather up and lay before the grand jury the essential facts of a case. The facts difficult to obtain—the transaction between the carrier and the favored shipper—are fully spread upon this indictment. The facts not difficult to obtain—the identity of the shipper discriminated against—constitute the fatal omission. Ordinary alertness and intelligence would have avoided this pitfall."

Herein the court declared that the facts as to the identity of the shipper discriminated against are "not difficult to obtain" and sharply animadverted upon the failure to obtain them, whereas the Commission, in its annual report, dated January 17, 1902, has declared that the discovery of such facts "is almost always impossible."

In this the Commission flatly opposes its opinion to that of the judiciary and of every freight traffic manager in the country. I mention this contrariety of opinion upon a matter easily susceptible of proof as one worthy of Congressional inquiry.

The judicial opinion just cited relates particularly to the offense of unjust discrimination. But in the same case the court stated the fact that it is a violation of the law to charge less than the tariff rate. Even this offense, not involving any charge of unjust discrimination, the Commission seeks to ignore, declaring that the law "does not punish (it) otherwise than by a possible nominal fine." The law, however, explicitly prescribes for this particular offense a fine of "not to exceed \$5,000."

The declaration of the Commission that the act to regulate commerce does not confer upon it ample power to prevent rate cutting is strenuously denied by able lawyers and jurists who hold that sections 2, 6, 10, 12, and 16 of the act give it ample power to correct and prevent such offenses. If, however, the law is in this respect defective, by all means let it be amended so that the procedure may be freed from any political difficulty.

Differences of opinion prevail as to the nature of the remedy which should be adopted for the prevention of rate cutting. In its fifteenth annual report, submitted January 17, 1902, the Commission suggests as a remedy for rate cutting that the corporation as well as its officers should be subject to the penalty prescribed in the act. The general solicitor of one of the great trunk lines of the country suggests that the corporation alone ought to be subject to the penalty. The question is one to be determined by Congress and is worthy of careful consideration.

It is believed that any proper amendment to the act in regard to rate cutting would be cheerfully accepted by the principal railroad managers of the country, and that they would cordially cooperate in the enforcement of the law. The public attitude assumed by the leading railroad officials of the country toward this subject seems fully to sanction this statement.

In this connection it is worthy of observation that the Commission fails to show in how many cases it has given the courts a chance to consider rate cutting upon evidence which the court declares not difficult to obtain, or to adduce evidence upon which the courts may impose what the Commission calls "a possible nominal fine," but which may amount to \$5,000 and which with ordinary diligence can be imposed.

It is believed that if the Commission had been half as earnest in the attempt to pre-

vent rate cutting as it had been in its efforts to secure autocratic power, the misdeameor complained of would now be very much less the subject of complaint. It is believed also that a thorough Congressional investigation of this particular subject would clearly expose a manifest dereliction of duty on the part of the Commission.

The history of the case exposes the aversion of the Commission to a duty clearly imposed upon it by the interstate-commerce act, and this is exhibited nowhere so glaringly as in the oft-repeated assertion of the Commission that it has been deprived of the power to afford relief to complainants against wrongs incident to infractions of the law, and that is not responsible for the prosecution of specific violations of the provisions of the act to regulate commerce, both of which statements are strenuously denied.

A recent news item indicates that at last the Commission has awakened to a realization of the fact that the law imposes upon it a duty with respect to the suppression of rate cutting, and that it is disposed to try to set in motion the means for accomplishing that object before the courts, as provided in the act to regulate commerce.

The remedy proposed by the Commission is not applicable to the cure of the evil complained of. The plan of conferring upon the Commission the power to prescribe rates is totally inapplicable to the offense of rate cutting. It has no relation to such offenses as of means to an end. The Commission has never sought to show that it has such relation. There is not the slightest reason to believe that rates made by the Commission would be any more exempt from rate cutting than are rates made by the companies. The true remedy pointed out by the judiciary and by the lessons of experience lies in a faithful enforcement of existing laws, which the Commission has spurned and neglected to enforce. Such laws, however, may be amended or supplemented by others which would facilitate the administrative work of the Commission, for the question is one of procedure and not one as to the power to act.

The history of the course pursued by the Commission in this matter clearly indicates that the idea of asking Congress for autocratic power over the commercial, industrial, and transportation interests of this country in order to suppress rate cutting is an afterthought. Rate cutting is now brought to the front apparently from the fact that the Commission sees no other means of advancing its claim to the exercise of autocratic power either in exorbitant rates or in unjustly discriminating published rates.

Secret violations of published rates have their origin in the competition of rival commercial forces and are expressions of such struggles. This is apparent to merchants and to railroad managers throughout the country, and as such is deprecated by them. The fact is also clearly perceived that the remedy for such evils lies primarily in railroad self-government dictated by enlightened views of self-interest, the inspiring motive of all wholesome statutory enactments. Unfortunately the Commission has frowned upon such self-restraint and sought to substitute therefor its claim to the exercise of arbitrary power.

The question is one of vast political import and should not be left to the discretion of any administrative body—certainly not to any bureau of the Government bent upon the acquisition of autocratic power over the commerce and industry of this country. It is eminently a question for Congressional determination.

Besides, it may be observed in this connection that the duty imposed upon the Commission by the twenty-first section of the act to regulate commerce, to recommend to Congress such additional legislation "as the Commission may deem necessary," does not extend to great questions of public policy or to political questions which would naturally command the attention of Congress, but, in the language of Mr. Justice Shiras in *Texas and Pacific Railway v. Interstate Commerce Commission* (162 U. S.), should "be confined to the obvious purposes and directions of the statute." It is to be regretted that the Commission has not been guided throughout by this obvious rule of propriety.

Beyond all question the remedy proposed by the Commission is misdirected. There are always two parties to offenses involving contractual relationships. In the case of rate cutting these are the shipper and the carrier. The shipper is invariably the prompter to the offense, for it is always to the interest of the carrier to secure tariff rates and to the interest of the shipper to secure less than tariff rates.

The concrete cases which supply the text and ostensible cause of the present movement of the Interstate Commerce Commission for the purpose of preventing rate cutting is furnished mainly by the persistent efforts of certain large shippers of packing-house products of the West to secure less than tariff rates for the carriage of their products. It is an old story, to which public attention has been several times directed during the last two years. So uniform, however, has been the "cut" by the several competing companies that it constitutes practically a common rate, lacking only the legal requirement of publicity. The rates actually charged would avoid

the censure of being "cut rates" if they were published. They involve no material discrimination with respect to producers, localities, or shippers, but do involve most outrageously discriminations with respect to carriers. All this is clearly stated by the Commission in its annual report just published. Therein it adduces the fact that at one time a particular road "was carrying into Kansas City 33½ per cent of the cattle slaughtered there and carrying out of that city only 2 per cent of the product."

The Commission also shows, in the report mentioned, that the cut rates are a source of benefit to the producer, the consumer, and the packer. At the same time they involve enormous loss to the carriers. This is stated by the Commission in reply to two self-addressed inquiries: First, "Who has the benefit of the reduction in these rates?" and, second, "Does it result in advantage to the producer and consumer, or is it absorbed by the packing house itself." The answer of the Commission to these questions is as follows:

"It seems probable that in case of a reduction like this, which seems to be tolerably uniform and long continued, the general public must obtain some advantage, but we think that in the main these sums swell the profits of the packers. The number of these great concerns is only some five or six, and there does not appear to be much discrimination between them. Each usually knows about what the lowest rate is and usually manages to obtain that rate."

This clearly expresses the whole matter at issue. The cut rate is practically a common rate, and irregular only because not published as required by law. This results in some benefit to the producer and the consumer, much more to the packer, and appalling loss to the carrier—the railroad company. This conclusion has been laconically expressed as follows by one of the Interstate Commerce Commissioners since his recent return from Chicago: "The fact is that five or six big shippers have for years been sandbagging the railroads." Hence the question arises, Why attempt to punish those who are sandbagged, instead of having recourse to some plan to punish the sandbaggers? But it is just this injustice and manifest solecism into which the Commission has unconsciously stumbled in its most unreasoning desire to acquire a coveted power by visiting upon the railroad companies the severest and most humiliating punishment, namely, that of depriving them of the right to contract freely with the general public as to the commercial value of the service which they render and with no other apparent excuse than an utter inability to base their claim to autocratic power upon any other plausible pretext.

What has been said of rates on packing-house products applies substantially to complaints as to "cut rates" on wheat and flour. The latter involves a long and sharply debated question as to the relative rates on wheat and flour. This is a complex and involved commercial and economic question. The general but rather vague conclusion of the Commission in regard to it is expressed as follows on page 16 of its last annual report:

"To an extent the rate upon flour in the foreign market must be higher than that upon wheat. This is decreed by physical conditions which no statute and no commission can alter. To that extent this industry must expect to operate at a disadvantage."

In the light of all these facts the proposition to have recourse to the haphazard and absurdly misdirected remedy of governmental rate making for the cure of problematical evils attending the transportation of provisions, flour, and wheat and the commerce in these commodities would be as absurd as it would be monstrous.

A Congressional investigation as thorough and as impartial as that known as the "Cullom investigation of 1886" would not fail to set all these difficulties in their true light and to disclose a remedy which would be properly directed and efficacious.

I have sought neither to palliate nor to defend rate cutting. Its extent and effects have been greatly magnified for the purpose of predicated upon it the Commission's claim to the exercise of autocratic power, but it is an undoubted evil, and has no defenders other than those shippers who practice it to their own advantage and to the detriment of their competitors and of the carriers. Beyond all doubt it is an evil which can be abated and as successfully prevented as are other misdemeanors which are mala prohibita.

Mr. Chairman, there is one subject I would like to speak to you about, in which I am very much interested, and that is the importance of a thorough Congressional investigation of the railroad problem. During our long period of railroad construction we have had only one thorough investigation on this subject. These hearings, you know, are partial. Your time is broken in upon, but to come down to a thorough investigation, we have had but one, namely, the Cullom



investigation of 1886. Even the Windom investigation of 1873-74 was not a complete railroad investigation. I was employed as a specialist by the Windom Commission on this very question. Subsequently I studied the question carefully and wrote a series of reports on it as Chief of the Bureau of Statistics, the result of ten years of investigation.

In England, since 1840, they have had ten Parliamentary investigations. With only one twenty-fifth of the area, and with only 22,000 miles of railroad, as against 200,000 miles of railroad in the United States, Great Britain has had ten investigations on that subject. I have worked up something upon that subject with great care, and I will hand it in; and I want to say that when you consider all the complexity of conditions—these difficulties—I have been studying this subject for over forty years. I began to write on it in 1856, when I was employed as a civil engineer on one of the first railroads constructed in Iowa. There is nothing I crave so much as the knowledge which would come from a thorough and impartial Congressional investigation, such as was had in England, which was started in 1842. Mr. Gladstone was chairman of that investigation, and it was an example for all the commissions which have followed in England.

There is another subject which I would like to bring to your attention. It will not take me over five minutes. I refer to the history of pooling. In no other way can you get at the merits of pooling. That is the way with all great economic questions. Their solution is always based on the lessons of experience.

Perhaps there are few living men who are more familiar with the early history of pooling than I am, because so many others, with whom it was a matter of personal experience are now dead. Many railroad men, especially well-informed men, have passed away within the last ten or twelve years. Go back with me to 1856, when every railroad was practically independent of every other railroad. The idea of building competing railroads was not entertained. Such a thing was thought to be bad policy. That idea prevailed in your State, Mr. Chairman, at the time when I was out there in 1855, 1856, and 1857. There were five lines projected. In a letter which I wrote to a New York newspaper at that time—

Mr. STEWART. Can you tell us what you represent, what organization, if any?

Mr. NIMMO. I am coming to that in a moment. This is about the substance of the article describing the railroad problem of that period, in 1856. It was like this: "There are five railroads projected across Iowa. Take those five roads; they will each be about 20 miles apart, 20 or 30 miles, so that each railroad will have 10 or 15 miles of land on each side to feed it. Each one will have a separate terminus on the Mississippi River, which is to be for all time the great highway of commerce for the United States. They will each have a different terminus both on the Missouri River and on the Mississippi River. The commerce will come out from the West to go down the Mississippi River. That was about the idea of having it then and competition was not known. At that time the best informed railroad men in the country, engineers and constructionists, declared a transcontinental railroad to be an impossibility, that it could not be constructed in one hundred years.

All that is of the dead law. Now, we have one vast network of

railroads extending from the Atlantic to the Pacific Ocean. The physical union between them became as intimate as that between the Siamese twins. The intimacy begot strife. It is said that Chang once beat Eng into a state of insensibility, and the result was that they both had to go to bed for three weeks. The railroads encountered similar troubles; they were forced to adopt measures in the nature of self-government. Now, the railroads of the country constitute physically one great organization. That organization must have the means of self-government. That government has got to be instituted in some way by associations of various sorts. They adopted all sorts of plans to complete this organization of the American railroad system, the greatest system of transportation the world ever saw. It is still involved in difficulty, but it is the grandest system of transportation the world ever saw.

Mr. STEWART. Is there harmony in this one organization?

Mr. NIMMO. The degree of harmony is wonderful; but still there are loose ends, there are frictional resistances, and there will be to the end of time. Here the question which confronted all the railroads of the United States was, "How can we organize this great mass of railroads so intimately connected physically?" It is physically one. It is united in ten thousand different ways. Cars and locomotives all employed jointly on different lines. There is a commercial demand that goods starting, say in Chicago, shall go in that same car over the different roads to the furthestmost part of the country. The act of June 15, 1866, was the result of public demand. I have called that act the charter of the American railroad system. It permitted the railroads to connect their lines and to engage in joint traffic. That brought about the most terrific problem, one of the most complex and the most difficult problems that the human intellect ever grasped. It has not yet been worked out perfectly, and never will be; there always will be frictional resistances and incidental resistances.

And now as to the history of pooling: There had been some small efforts at pooling as between Chicago and Omaha. Three or four of the Iowa roads got together and they made a pooling contract, a division of traffic. There were two or three other arrangements of the sort. But the question arose how to take a whole series of railroads in different States and sections and get those roads into an agreement which would stop cutting each others' throats, a practice which brought about horrible discriminations. That which occurs to-day is nothing compared to it. Demoralizing discriminations occurred all over the United States. There was one man, Albert Fink, vice-president of the Louisville and Nashville road, who worked out a plan by which he could take the railroads south of the Ohio River and bring harmony out of that great mass where they were fighting commerce to death. He figured that out.

The history of that is this: In 1875 I entered upon an office which was created for me. It was called the division of internal commerce, for the purpose of carrying on the study of what the Senate Committee on Transportation Routes had been engaged on for two years. I entered upon that work the 1st of July, 1875. In September Mr. Fink was appointed and started his big pooling scheme at Atlanta, Ga. I wrote to him that I would like to understand his scheme, and he came to Washington to see me and talked it over. He spent a week here. We talked over the pooling scheme, and the aim and object was

to stop this cutthroat fight involving these outrageous discriminations, which were bringing about chaos in the traffic of the commerce of the country. Mr. Fink had hard work to get his scheme into the heads of railroad officers. He did not succeed perfectly. He died almost in despair because he believed he had a remedy for the whole difficulty. He could not get the railroad presidents of the United States to agree with him on certain points.

The first principle in all railroad transportation is to get traffic. The second principle is to get as much as you can for it. The first step is an agreement as to the proportion of traffic which each line is to have. That has got to be the basis upon which we can build up the government of this great organization. He got them interested in it. I said to him:

Your scheme has two grounds of support. First, you have demonstrated the fact that an enlightened sense of self-government ought to prompt these men to adopt this scheme. The second, they have implicit confidence in you, in your intelligence, and in your integrity. But they need a third prop, for it takes three props to make a stable tripod. No inanimate thing can stand unless it has three points of support. You have to legalize this thing. You must make it legal.

He said, "That will come by and by."

The fact is, this whole pooling scheme ran on two points of support. It occupied a position of unstable equilibrium.

I think to-day pooling is very unpopular with some of the leading railroad men of the country. Some men say that they would rather have a simple agreement as to rates. Then let the rates divide the traffic. But I think pooling among the leading railroad men is unpopular. Don't you think so, Judge Knapp?

Judge Knapp does not answer that. I think the Judge must know that.

MR. KNAPP. I am not afraid to answer any question. I stated yesterday that if the right was exercised it would rarely find expression in pooling; it would find expression in the organization of traffic associations.

The CHAIRMAN. Mr. Nimmo, I would like to ask you for whom you speak, if for anyone?

MR. NIMMO. Only for myself.

The CHAIRMAN. You are not authorized to speak for anyone else?

MR. NIMMO. No, sir. I have been asked two or three times to represent certain parties, but the fact is that the railroad men of this country are just about as much at loggerheads and as diametrically opposed to each other in their views as other men. My business is that of statistician and economist. I furnish information, and I am very desirous of furnishing information, not only to people that believe as I do, but to people that do not believe as I do; and sometimes the people who do not are in the majority, and, like everybody else, I like to have as much patronage as possible. I have had a wide correspondence on this thing, and I want to be perfectly independent in my views.

MR. STEWART. You are in the pay of some of the railroads?

MR. NIMMO. I furnish information.

MR. STEWART. You furnish information now in reference to these hearings?

MR. NIMMO. No, sir; nobody has ever suggested—

MR. STEWART. I mean you have furnished information in regard to these hearings?

Mr. NIMMO. I furnish information to anybody.

Mr. STEWART. Who are those corporations?

Mr. NIMMO. I merely furnish information. The companies will appear here by the attorneys of the railroads.

Mr. STEWART. Have you any delicacy in furnishing their names? Yours is an honest employment?

Mr. NIMMO. Yes.

Mr. STEWART. Why should you conceal your employers' names?

Mr. NIMMO. The same as anybody. I would rather not. If they want to come up and use my statistics they can quote them, but my work is confidential; I have pursued that course.

Mr. STEWART. That is the vice we want to get rid of—these secret arrangements and rebates. Why should you be so clandestine about your employment? That is what we are complaining about.

Mr. NIMMO. I am giving you merely a philosophical view of the case as I understand it after forty-two years' study.

Mr. STEWART. You do not want to pose here as a philanthropist? You do not say you are publishing these statistics without remuneration?

Mr. NIMMO. Oh, no; oh, no. I say I am adopting the profession of statistician and economist. I furnish information, and it is all confidential.

Mr. STEWART. Were you invited to come before this committee?

Mr. NIMMO. I asked my friend, the chairman, to let me come up here. It is the joy of life to me to be engaged in this work, Mr. Representative. Besides any question of remuneration, I am in this work because I am personally interested in it. I have been preparing a book on it for forty-six years, and I expect to continue in the work while I live.

Mr. STEWART. But you are not doing it merely for your health?

Mr. NIMMO. No; I have a book that I am writing, and it has got to be a life work with me. My book will be entitled the Evolution of the American Railroad System. I have written a great deal on the subject, and I want to boil it down, but I want the subject to evolve a little further. There are some problems that you have before you which I want to see settled before I finish this work.

Mr. STEWART. What is the rate per volume?

Mr. NIMMO. I do not know how big the volume is going to be.

The CHAIRMAN. We have been in session now over three hours, and the committee will be in recess until next Tuesday, April 29, at 10.30 a. m.

(Adjourned.)

The following is the statement referred to in the course of this hearing in regard to the importance of a thorough Congressional investigation of the railroad transportation question in this country.

#### INVESTIGATION BEFORE LEGISLATION.

The many vitally important questions which confront the country touching any attempt at a radical change in our laws relative to the regulation of the railroads seem to point unerringly to the necessity for a thorough Congressional investigation of the subject in advance of any attempt to legislate upon it. In this we may profit very much from the example set by the people of Great Britain.

As early as the year 1840 questions arising out of the independent corporate ownership and control of the railroads agitated the public mind in Great Britain. The old British ideas of liberty involved in the consideration of monopoly, competition,

and combination, which from time immemorial had been the subject of heated public discussion and of reflective judicial debate, gave rise to just such apprehensions and political theorizing as those which now seriously affect public sentiment in the United States.

A British statesman of influence declared at an early date that "the State must govern the railroads or the railroads would govern the State." George Stephenson—eminent as a civil engineer—declared that "where combination is possible competition is impossible." These expressions were for years accepted in Great Britain as politico-economic dogmas.

In the year 1844 a strong Parliamentary committee was appointed for the purpose of inquiring into and providing against the assumed danger. The Hon. William E. Gladstone was chairman of that committee. Its labors resulted in an act of Parliament (act 7 and 8 Victoria, 85) passed in the year 1844, wherein it was provided that the Government might, upon terms stated in the act, at the expiration of fifteen years after completion, purchase any railroad constructed after the passage of the act. In a word, the British Parliament provided, constitutionally, for governmental ownership and control of the railroads. But that power has never been exercised, and the public sentiment of Great Britain to-day utterly repudiates any such policy.

This has come about as the result of the lessons of experience and of patient and persistent Parliamentary inquiry, reference being had particularly to the Parliamentary investigations of 1840, 1844, 1846, 1852, 1865, 1867, 1872, 1881, and 1893-94. The results of these ten Parliamentary inquiries were that the asserted dogmas hereinbefore quoted have been exploded, while other baseless notions, such as those which now to a greater or less degree possess the public mind in this country, have been dispelled; and the ancient principles of liberty and methods of justice still prevail in the regulation of the railroads of Great Britain. In this regard railroad regulation in that country strikingly illustrates the favorite British maxim, "We have government by discussion."

But how different has been the practice in this country. With an area, exclusive of Alaska and our insular possessions, 25 times that of Great Britain and Ireland, and a railroad mileage of 192,161 miles, as against 22,000 miles in Great Britain, we have had only one thorough Congressional investigation, namely, that conducted in the year 1886 by the Senate Committee on Interstate Commerce. The act to regulate commerce drawn by Senator Cullom, chairman of that committee, is loyal to the fundamental American principle of government, that all contested questions affecting the commercial interests of the country shall be subjected to the test of judicial inquiry and determination. But the Populistic proposition confronts the country in favor of eliminating the courts from this domain of justice and in lieu thereof of substituting an autocratic rule of administrative authority, without any Congressional investigation whatsoever.

There are also other and exceedingly important questions which demand Congressional investigation and public scrutiny in the light of such inquiry. Some of these questions are more important than those determined by the Senate investigation of 1886.

The magnitude and importance of the commercial, financial, and industrial interests involved repel the very idea of any radical legislation in advance of such inquiry as that here suggested.

Beyond all doubt, a thorough Congressional investigation of the various commercial, economic, and political questions involved in the general subject of railroad regulation in this country would develop results quite as salutary as those realized in Great Britain. It may also be stated in favor of such action that the two committees of Congress, as at present constituted, are admirably fitted for such inquiry.

In his recent annual message to Congress, President Roosevelt referred to the railroads as "the arteries through which the commercial lifeblood of this nation flows;" and in urging the importance of investigation said: "The whole history of the world shows that legislation will generally be both unwise and ineffective unless undertaken after calm inquiry and with sober self-restraint."

INTERSTATE COMMERCE COMMISSION,  
*Tuesday, April 29, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

**STATEMENT OF MR. A. C. BIRD, OF CHICAGO, ILL.**

The CHAIRMAN. What road or system are you connected with?

Mr. BIRD. The Chicago, Milwaukee and St. Paul Railway Company.

The CHAIRMAN. What are the principal points that that line reaches?

Mr. BIRD. That line is operated in eight States—Illinois, Wisconsin, and the peninsula of Michigan, Missouri, Iowa, Minnesota, North Dakota, and South Dakota. Its lines reach Omaha and connect with the system of roads running through Nebraska and west to the Pacific coast. In Kansas City its lines connect with the Kansas lines running to the coast, Denver, and all through the far West and the Southwest, Texas, and the Gulf of Mexico. It is directly interested in the traffic of many large cities, commercial centers, manufacturing and distributing points, such as Chicago, Milwaukee, Racine, St. Paul, Minneapolis, Lacrosse, Winona, Dubuque, Cedar Rapids, Des Moines, Sioux City, Sioux Falls, and the great Northwest wheat belt, which lies east of the Missouri River in the Dakotas and extends northward to Fargo. It is in touch with the general traffic of the country, as well as through all the States I have named.

If you please, Mr. Chairman, I am not a public speaker, and I can not easily suffer interruption and preserve my thought, and if I may be permitted to go forward with my statement without interruption I would prefer to do so.

Mr. BLYTHE. Just at this point I would like to ask Mr. Bird to state his services with the Milwaukee and St. Paul in a general way, in order that the committee may be informed of his means of knowledge.

Mr. BIRD. I am the third vice-president of that company. I have been connected with the company twenty years in various capacities. I have heard and read a good deal of what has been said on the subject of the necessity of the proposed legislation, and I have attempted to keep in touch with what has been said in this committee room in favor of the bill. I understand that the bill in contemplation is the Corliss bill, and that that clause of it by which it is proposed to confer upon the Interstate Commerce Commission greater power over rates than they have at present is more particularly under consideration.

That clause proposes to give to the Commission the power to fix rates after complaint and investigation, and to enforce their orders by a process which sets aside the usual order of procedure and denies to the railway owner the rights of property which are conceded to all other property owners.

The right to fix a rate and to collect it is the essence of railroad property, and to take away that right and vest it in a board is to deprive the stockholders of their property without due process of law. Many reasons have been urged in support of this unique proposition, and the principal ones which have attracted my attention are:

First. That serious abuses exist, and therefore the proposed measure should be adopted to put an end to them.

Second. That the orders of the Commission are disregarded, and certain cases have been cited and elaborated upon to show that an emergency exists which justifies an unusual procedure. The cases upon which great stress has been laid are the Milwaukee Chamber of Commerce grain rates case, the Eau Claire lumber rate case, and the food rate case of the Northwest. At the proper time I will make some further statement in regard to these cases.

Third. The practical abolition of railway competition.

Fourth. It is said that for the first ten years under the law the carriers as well as the public and the Commission believed that the Commission had the power to fix their rates after investigations, and that the orders of the Commission were promptly complied with; that the public was well served and satisfied.

Fifth. That the right of eminent domain enjoyed by carriers is a sufficient reason for depriving the carriers of all other rights.

Sixth. That, aside from the prevalence of secret preferential rates and rates which are unreasonable per se, relatively unreasonable rates prevail generally, and no remedy is available unless the Commission is clothed with the arbitrary power of the enforcement of its own opinions.

These are the principal reasons that have come to my attention which have been urged in support of the measures now under consideration, and I would like, if you please, to touch upon these matters as briefly as possible from the standpoint of everyday experience.

I am not versed in law, and I can not undertake to view this subject from a strictly legal standpoint. I claim some practical knowledge of the practical side of these questions.

The first great complaint is well founded. There is not an official of any of the railways of any prominence or weight who will attempt to deny that the railway service has been honeycombed with secret preferential rates, which, to use an old popular phrase, make the rich man richer and the poor man poorer.

Nor is there a respectable railway official of responsibility or authority who will not admit that that one abuse adds more to the difficulties, the anxieties, and the perplexities of railway management than all others combined; and speaking for myself, for the company which I represent, and for the class of officials of which I am one, I think the unanimous desire of railroad people is to aid in the enactment of measures which will do away with that great, admittedly great, and flagrant abuse. At the proper time, if you permit—at this time, perhaps, as well as any—I wish to make a suggestion that is not an original one (it has already been made to this committee), but I wish to add the weight of my opinion to what has been said on that subject.

The original act, or the act as soon afterwards amended, provided penalties for this class of offenses; it was made criminal. The committee is well advised of all those conditions, that the offense has been made infamous, not only criminal but infamous, because punishable by an infamous punishment. The very nature of the case is such that if the offense is committed, or when an offense is contemplated, the two parties to the offense surround the case with every possible safeguard, and there are so many ways of violating the spirit of the act in that respect that it has always been exceedingly difficult to obtain evidence sufficient to bring the guilty parties to punishment.

So much has been said regarding the reasons why railroad officials who are morally certain that the offenses exist will not testify that it

is unnecessary for me to amplify upon that point, because all that has been said by the proponents of this measure is freely admitted by railroad people. This is the great crime of the times—secret preferential rates—and it seems to me that this committee may wisely attempt to devise means by which those crimes can be reduced in number and the practice itself discontinued.

If I conceive the situation properly, the method, the whole responsibility, of the convicting and bringing the guilty parties to justice devolves upon the Commission and the limited agencies which it is able to maintain. And, for the reason I have given, they have met with the utmost difficulty. It has been almost no thoroughfare.

Every railroad officer, stockholder, director, manager, or official is much more in position to find the facts and ascertain the means by which the truth can be ascertained in the form of testimony, and has much more complete and satisfactory means of so ascertaining it than any expert of the Government has so far been able to employ. As the bill stands, if the law could be so amended as to abolish the personal feature of this penalty and to levy a just and proper fine upon the offending carrier for each offense, that act would instantly convert an army of 100,000 experts into detectives interested in bringing about the enforcement of the law. I speak in this manner after an experience of a good many years, and I know that there are thousands of cases where to the public the existence of the evil is morally certain, but none but an expert knows how to get evidence such as is necessary to enforce the penalty.

It has been asserted here that there are a number of cases that show where the order of the Commission is disregarded, which proves conclusively that this is an emergency and that new measures must be adopted. I would like to add a few words, if you please, in regard to the first subject. I find nothing whatever in the proposed measures that touch upon the chief cause of complaint. I do not see how it is possible that the mere power on the part of the Commission to fix a rate after a complaint will enable it or any other tribunal to detect and punish the grave secret offenses so often and so properly referred to. I find nothing whatever in the bill that even approaches that subject.

Regarding the second argument, that the orders of the Commission are disregarded, the Milwaukee grain-rate case was a peculiar one, and I am glad that the chairman of the Interstate Commerce Commission is here to hear what I have to say on that subject, and correct me if I fall into error. The complaint was brought by the Milwaukee Chamber of Commerce against the Chicago, Milwaukee and St. Paul Railway Company. In the course of the proceedings other roads became parties. I am not sure but a number of them were originally parties to it; but others were added. Also, in the course of the procedure the Minneapolis Chamber of Commerce, a rival (and a very strong rival) of the Milwaukee Chamber of Commerce, also became a party to the controversy. In order to make that case clear to the committee a map ought to be here to show the geography of the lines involved, but I will try to describe them to the committee.

The St. Paul Company has a line running west from Milwaukee through Wisconsin to Prairie du Chien and westwardly through the northern counties of Iowa to its western border, and beyond into South Dakota to the Missouri River. This line is known as the Iowa



and Dakota Division. It is as near a direct east-and-west line as exists anywhere. It also has a line, one of its main thoroughfares, running northwestwardly from Milwaukee to La Crosse and thence westwardly through the southern portion of Minnesota and beyond into South Dakota, known as the Southern Minnesota Division, parallel to the first described line, to its intersection with the James River Valley, which is the center and heart of that portion of the northwestern spring-wheat belt which is reached by the lines of the St. Paul Company, with one exception. It also has a line running southwardly from Minneapolis through southern Minnesota, and which crosses the Southern Minnesota Division and thence southwardly to Mason City, Iowa, where it connects with the Iowa and Dakota east-and-west line first described.

These lines from the wheat belt in western Minnesota, western Iowa, and South Dakota to Minneapolis are right-angle lines in each case. Its lines to Milwaukee are direct lines. There exist a number of rival lines radiating westwardly and southwestwardly from Minneapolis, tapping the lines of the St. Paul Company which I have described at acute angles. One instance will be sufficient to illustrate. The Northwestern system, including the Northwestern road proper and the St. Paul, Minneapolis and Omaha, intersects or parallels the St. Paul Company's lines in southwestern Iowa, southern Minnesota, and South Dakota. Pipestone, Minn., is one point of direct contact which is sufficient for the purpose of explanation, but the two competing lines are parallel for a long distance east of Pipestone. The lines of the Great Northern Company radiate like the spokes of a wheel from Minneapolis, cutting the lines of the St. Paul, and the north and south lines in the James River Valley, at angles in every direction.

Then the Minneapolis and St. Louis Railway Company has lines extending southwardly and westwardly from Minneapolis, largely parallel with the lines I have described from Minneapolis, and those lines radiate westwardly and southwardly, crossing the St. Paul lines to Chicago, Milwaukee, and Minneapolis at various angles and distances from the principal market of the competing companies, Minneapolis. The Chicago and Northwestern system has lines southwardly and southeastwardly from Minneapolis to Milwaukee and Chicago. The Illinois Central has lines through the northern portion of Iowa east and west, not touching the Milwaukee market, but reaching Chicago only.

Now, the complaint of the Milwaukee Chamber of Commerce was that the rates from the wheat district, say, from Pipestone to Milwaukee, did not bear a just relation to its rates from that point to Minneapolis; that the differential was not justified by the additional haul; that the distance from Pipestone of the two rival markets was disproportionate; or rather that the differential against Milwaukee was disproportionate with the difference in distance. Proceedings were brought under that clause of the law which requires that rates shall be comparatively just and reasonable.

It seemed to me, representing the interests of the St. Paul Company, that there was much foundation of justice in the complaint. I, like many others, was influenced by what appeared to be the interests of my company. There were many reasons why it would have been profitable to have hauled a larger proportion of the wheat crop to Milwaukee, and the principal defense of the conditions complained of was

the importance of the Minneapolis market as a millers' market and the large volume of business which resulted from the manufacture of the wheat into flour. The order or recommendation of the Commission in the case seemed to be eminently just, and at first it was regarded as a wise, prudent decision. There was no attempt by the Commission to fix the rates to Milwaukee from any of the wheat-producing districts.

The controversy was as to the relation of rates, and the substance of the order was that a properly constructed distance tariff which was designated by the Commission should be used by applying it to the rate from a given point to Minneapolis, using the distance traversed, and from that same point to Milwaukee, using the distance in that case also, to see what the rate difference was, and that difference should be substantially the differential in lieu of the differential complained of. I think the Chairman of the Commission will correct me if I am wrong. I do not attempt to follow every detail.

Necessarily, all the railways concerned in the complaint, or concerned in its settlement, convened their traffic officers to revise their rates so as to bring them into harmony with the decision of the Commission.

But practical difficulties that had never before been encountered in that precise way showed themselves, so that it was found impossible (practically impossible) to make any substantial modification of the rates, because companies that were rivals of the St. Paul company had the same standing that the St. Paul company had, and they were entitled to the application of the same principles that was to govern the St. Paul Company, and the Minneapolis Chamber of Commerce was entitled to all the benefits that could be obtained from the Commission's decision, precisely the same as the Milwaukee Chamber of Commerce. It soon became apparent that the distance of the St. Paul Company from Pipestone to Milwaukee bore a greatly different relation to its distance from Pipestone to Minneapolis from that which the distance over the Northwestern from Pipestone to Milwaukee bore to its distance from Pipestone to Minneapolis, the Northwestern Company's line from Pipestone to Minneapolis being the short line, and its line to Milwaukee being the long line, and the St. Paul Company's line to Minneapolis being the long line, and its line to Milwaukee being the short line.

So that if the St. Paul Company reduced its rates to correspond with its own individual mileage the same line of reasons and the same recommendations of the Commission would require the Northwestern to reduce its rate from Pipestone to Minneapolis; and so we would have the rate of first one road going down and then the other, and so on back and forth without end a whirlwind of reduction, without in the least changing the relation of the rates, which was the sole cause of the complaint.

The modifications of the rates under these circumstances were immaterial. The Milwaukee Chamber of Commerce people were dissatisfied, and in the course of time they petitioned for a further hearing, which was granted. The circumstances and conditions affecting the case was explained to the Commission.

My recollection is that one member of the railroad committee then and there, by the consent and approval of all the others, made this suggestion, that the Commission might fix rates from all the territory involved to the two competing markets, and the railroads were pledged to accept them in full. If I recollect right the chairman of the Commission himself disclaimed for the Commission their fitness for under-

taking that line of action and assumed that it was the duty of the railways to adjust their rates as closely as possible to the orders or suggestions of the Commission. They were asked to renew their efforts and to see what could be done. The Milwaukee Chamber of Commerce was represented at that hearing by a number of its experts who had been engaged in traffic more or less; they were employed by their chamber of commerce to supervise this case.

The Minneapolis Chamber of Commerce was represented in like manner, and the railway companies then proposed that if they could agree unanimously upon a schedule of rates, that the railroads would adopt those figures. They failed of any agreement and that was the end of the case.

Mr. Chairman, one of the gentlemen who cited that case to this committee to show how necessary it was to clothe the Commission with additional and unusual power, knew as well as I know, as well as the chairman of the Commission knows, the truth of the case, and I want to add that a very large proportion of the complaints with which I have to deal have been instigated and backed and pressed under just such circumstances.

Another case referred to, upon which much stress was laid, is the Eau Claire lumber-rate case. Eau Claire is a railway point, and is located upon the Chippewa River, which empties into the Mississippi River at Reeds Landing. There was at that time an immense production of lumber at Eau Claire, and instead of being shipped by rail it was dropped into the river and rafted to points on the Missouri River, and the low cost of transportation by water, in connection with prices at Mississippi River markets, was such as to put upon the lumber at Eau Claire a value so great as not to permit it to be shipped to the Missouri River markets at the then rail rates. It was a source of continual regret to us, having a line down the whole length of the Chippewa River, not to be able to secure a substantial portion of the immense tonnage produced at its very doors and floated past it.

In the more palmy days of the northern white pine, when the traffic to the West from the Missouri River cities was immense, there had been many discussions relative to the relation of rates from various manufacturing districts to the Missouri River cities. It was at that time the largest item of west-bound tonnage hauled on the roads west of Chicago. There was very great rivalry between the manufacturing points and rival carriers serving competing districts, and as far back as 1874, when I was first connected with a road interested in that traffic, meetings were held, and discussion of tariff rates to be made to and from the principal points were frequent. Every effort for a term of years was a failure. At one time there was a general convention of the railway people involved in the question, as well as the lumber people of the great white pine districts of Michigan, Wisconsin, and Minnesota. It was proposed at that time (I think that was in 1874 or 1875) that the lumber interests should appoint delegates having authority to represent their constituents from the various districts, and that they should then agree upon rate differences that should apply, but they failed to come to any agreement.

The railway companies thereafter submitted the matter to railway arbitration. I have nothing to say in defense of the principles which were recognized as controlling the arbitrator in his conclusions. They were bound to adopt the differences which he prescribed. He visited

the entire country and received cooperation from every district except the district of Eau Claire. The gentlemen there at that time did not understand the importance of the question. The result was that the arbitrator failed to get the information that was necessary to give Eau Claire a fair representation, and it was believed by me and by others at that time that Eau Claire was rated relatively too high.

In the course of time it became evident, as I have already said, that the lumber could not move to the Western markets by rail, and the middlemen of Eau Claire, and, I think, only one lumber firm, formed an association known as the Eau Claire Board of Trade. Some time in 1882 they filed a complaint against the St. Paul Railway Company, alleging that the rates from Eau Claire were relatively unreasonable as compared with the rates from other points, which were secondary markets, and that the distance of the St. Paul Company from Eau Claire, as compared with the distance from other manufacturing points, was such as to show the great discrepancy as to rates. The Commission rendered a decision which appeared to many to be just. The rate from Eau Claire to the Missouri River was not to exceed the rate from La Crosse and Winona by more than  $2\frac{1}{2}$  cents. The railway people did not fully comprehend all these conditions that would ultimately affect the situation.

They looked more to their own interests, and as I say, it seemed to the management of the St. Paul company that the decision was just, and would redound greatly to the benefit of the St. Paul road. All the rival carriers interested in many other districts besides Eau Claire, having lines from Eau Claire to St. Paul and southwestwardly to the Missouri River, reaching the Missouri River on the shortest possible haul to a Missouri River basic point, having a line connected with a part of their system from La Crosse and Winona, also, immediately reduced all the other rates including Minneapolis, to the same extent as the St. Paul company reduced the rate from Eau Claire.

The St. Paul company at that time felt aggrieved at this action, influenced somewhat by its own interest; but after having demonstrated clearly that it could not change the relation of rates, which was the basis of complaint, it restored its original Eau Claire rate, and resumed the old differential which was complained of, and all other rates were restored to the previous condition.

After more calm reflection and consideration of the matter, it occurred to me, and became very apparent, that the same trouble existed in the lumber rates that existed in the Milwaukee Chamber of Commerce case. I attempted to explain a moment ago that the relative rates and distances on one road were diametrically opposite to the rate and distances of other lines, and I do not see at this time how it would have been possible to have enforced the orders of the Commission. The gentleman who cited that case also knew the facts in the case.

The other case, and the only other case to which I wish to refer—

Mr. BLYTHE. Mr. Chairman, if I may be permitted to suggest to Mr. Bird a point which I wish to have brought out, I should like to do so at this point.

The CHAIRMAN. Very well.

Mr. BLYTHE. Would you be kind enough, Mr. Bird, to explain to the committee the manner in which the award of the board was originally made, who was a party to that award, why, if at all, the rate

was restored, how long it was in operation before the Eau Claire case was heard, why it was restored, and whether or not it is now in effect?

Mr. BIRD. What is the exact point you wish answered, Mr. Blythe?

Mr. BLYTHE. What led up to the award of the board, first?

Mr. BIRD. I only touched upon that briefly. The facts were that the railroad companies were competing with each other for the lumber traffic of the white-pine districts, from Chicago, from Wisconsin and Michigan and Minnesota points; controversies at that date centered largely on lumber going to and beyond Sioux City, Omaha, and Kansas City, which were then the gateways to the plains of Kansas and Nebraska, the great consumers at that time of lumber. The rival manufacturing districts and locations were without number. At that time Chicago was the prominent lumber market, by reason of the production on the east shore, and also the west shore, of Lake Michigan, which lumber was brought in enormous quantities by sail vessels to that market; and Chicago was recognized as the central basic point for all lumber rates. Milwaukee was then a manufacturing point of some prominence.

Racine was also an important point, by virtue of water transportation; and Menominee, Marinette, Green Bay, Oconto, and along the west shore of Lake Michigan, and then the Eau Claire district, the Chippewa Falls district, and Duluth and other places in that vicinity; and Minneapolis, by virtue of its river connections with the northern pine of Minnesota, was one of the larger points—I think the second largest—next in importance in volume of business and trade to Chicago. Various Mississippi River cities were also important factors. A great many railways were interested solely in the transportation of lumber from Chicago to the Missouri. Some were interested only from Stevens Point or Chippewa Falls; others from one town, and still others from different places, so that there was an interlacing of railroads, one having an interest here and another there, and the conflict was almost irrepressible.

The parties to this arbitration were the railroad companies leading from Chicago and all points in Michigan, Wisconsin, and Minnesota to the Missouri River, and some leading to Kansas City and Atchison, some to Sioux City and to no other points, and some to Omaha and no other points, so that you see there was a great complication of conditions. It was only after a warfare of two or three years, and after many failures to get a mutual understanding, that as a final resort, as a forlorn hope, an attempt to arbitrate by one man was made. Whole communities would rise up and say, "You are destroying our business, and if we can find any way of diverting our general traffic from you, we will do so;" and it was diverted, and the bloody hand was extended to the railroads of every district, and there was no remedy except arbitration.

Now, with the exception of a short interval following the orders of the commissioners those differentials have applied, have governed, since 1874 or 1875, excepting as they have been subsequently modified by the construction of new lines which made new railroad geography, and except as they have been affected by the discontinuance of manufacturing in various districts; the pine having been all used up; so that those differentials are to-day the law of the land. Is there anything more you would like to have me answer?

Mr. BLYTHE. Nothing more now.

Mr. BIRD. The other case, and the only other one to which I wish to refer, is what was known as the food-rate case. It is reported on page 48 of the Fourth Annual Report of the Commission for the year 1890. If my recollection is accurate, this case had its origin at a time when there was an unusual depression in the value of grain at home and abroad. The price of coarse grain in the Northwest was very low.

There was a considerable period during which the farmers burned their corn for fuel rather than buy coal or wood, and Congress passed a resolution directing the Interstate Commerce Commission to investigate the conditions and facts bearing upon that subject. I think Col. William R. Morrison was chairman of the Commission at the time, and repeated investigations and sittings at various places were held by the Commission, and a great mass of testimony was taken. Probably this was in 1890.

Mr. KNAPP. Judge Cooley was chairman at that time.

Mr. BIRD. Mr. Morrison was present and took a prominent part in the investigation. I think you are right, that Judge Cooley was chairman.

The rate on coarse grain from Missouri River points to Chicago was either 20 cents or 21 cents. The Commission not only made its report, as I suppose, to Congress, but it issued an order on the railroads directing a reduction of freights to a maximum of 17 cents to Chicago, versus either 20 cents or 21 cents, and 12 cents to the east bank of the Missouri River, which was used as a portion of the through rate to the seaboard, in lieu of 15 or 16 cents. Before the report was submitted, or soon after its promulgation, there had been a material advance in the value of food products. I do not know how much it was, but I think it was 25 to 30 per cent. At any rate, the railroad companies ignored the order and did not make any change of rates. Soon thereafter there was organized in the Northwest, including northwestern Iowa, the Northwestern Iowa Grain Dealers' Association, and by contract with certain counsel on the Commission basis, suits were entered in the United States courts for the reclamation of all the excess charges collected on their grain over and above 17 cents to Chicago, between the time of the order and the time when this suit was brought.

This suit was against three or four prominent Western railways—grain carriers—and I believe the amount sued for was in the aggregate \$3,000,000. I do not remember the exact period of time covered by those suits.

The case was tried before Judge Shiras at Dubuque, Iowa. The railroad company set up a demurrer that it was unlawful, having published a rate in accordance with law, and having enforced it in accordance with law, to refund any portion of it to the middleman or grain dealer, and the demurrer was sustained, in such language and under such terms as made it very apparent what the opinion of the court was in regard to it. The petitioners were granted leave to amend their bill. But that permission was not availed of, and the suits were practically ended at that time.

Contemporaneously with the suits a petition was filed with the Interstate Commerce Commission regarding the rate as a future proposition, and an effort was made to prove that the rate complained of was a result of the agreement between the railroads in contravention of the Sherman antitrust act. I remember a number of the hearings before the Commission conducted by Commissioner Knapp. I do not

remember how many there were, nor why the case was dropped; but it was made very apparent that if the railroad companies in that case had complied with the original order they would have paid out or lost a large sum of money without just cause, a loss such as has not yet been sustained by any other tribunal as being a just proposition.

The third reason given for the proposed unique legislation is the practical abolition of railway competition. It seems to me, Mr. Chairman, and gentlemen, that the assertion that railway competition has ceased comes from a consultation of fears rather than a knowledge of the facts. I have watched the proceedings which have been referred to. It has been my duty to watch closely the result of all these alleged combinations, and I hope you will give me the credit for sincerity when I say to you that the tide of competition was never as severe as it is to-day. The complications which grow out of this competition seem to be increasing continually, and I never knew the time when railway officials and railway agents were so necessarily keenly alive to the situation as now. Competition at a given point, or between two given points, between rival carriers is one thing, often severe and often destructive, but never so efficient, so forcible, so permanently an element of complication as the rivalry between communities.

If you will think for a moment how the railroad map of the United States looks, you will find such a vast number of complications by reason of one line or one system reaching one market point, and other systems reaching other points in part or in full, one line or system of lines centering in New York and reaching Chicago, and another line centering in some rival market; and if you will but understand that public favor is the very breath of our lives, if you will understand that communities are as selfish, are as unscrupulous as individuals in effect, in actual fact, and practice, you will find that there is no end to the pressure brought upon the traffic officers. I find in this honorable committee a gentleman whose interests center largely in one important city reached by the lines of the St. Paul Company, a city in which the St. Paul Company is recognized as the leading road. Doubtless he is as conservative, as considerate, of all property rights as anybody, and yet the community which he represents is as jealous, as remorseless, in efforts to get and maintain advantages over rival communities as any man is to gain a preference over his immediate competitor.

That practice permeates the whole railway situation, and the railway official who fails to perform the duties or secure the rates which a community wants, which are held to be necessary to its welfare and progress, is regarded as a public enemy and his company is punished accordingly. Nearly every important community in this wide land has organized a greater or less number of associations, trade bodies, boards of trade; they have appointed their experts, many of them taken from the trained ranks of the railway companies, and the official life and existence of these men depend upon their finding flaws in carriers' methods and discrimination in rates. I say that contention and competition are to-day greater than they ever were before.

Mr. DAVIS. You speak of the rivalry among railroads, I suppose, in order that the conclusion may be drawn that the rivalry may necessarily control and have a tendency to reduce rates. It has been stated before this committee by those who have appeared here that the railway rates are generally higher than ten years ago. Is that true?

Mr. BIRD. No, sir. Quite the opposite is true. I can not dispute

the statistics furnished by the Interstate Commerce Commission. They have means of information which are beyond my controversy. But speaking for the great territory in which I am interested I know that up to the last period of which we had any account there is a continuous decrease in the rate per ton per mile.

Much stress has been laid upon the fact that in the official classification—the western roads, our roads, are not included in that—in the official territory, that many articles have been raised into a higher class, and it is contended that that has a great effect on the rate per ton per mile. I am not so sure of that. I know that many changes have been made, but I have not heard a single word to prove that the present classification is such as to create an improper relation between various articles, nothing to show that in the crudities of early railroad evolution and management, the various articles had a proper relation to each other; and it is a very important question, and perhaps it is for the Commissioners to prove that the present relation of articles is not justified and that the old relation was justified.

But no matter if the changes in classification were unwise or did in some cases result in unjust discriminations, in any legislation which strikes at all property rights alike, and strikes roads which are not connected with the alleged offenses, is clearly unwarranted and unjust. You can not pass a law to fall upon roads who are known to be guilty if it falls also upon those roads in every other part of the country against whom no such complaint can be justly made.

Mr. RICHARDSON. Is it not a fact that the traffic relations between the railroads and the public are greatly improved, and that there is a better understanding to-day than for years past?

Mr. BIRD. Undoubtedly. I speak guardedly when I say that I am in touch with a great number of people directly interested in traffic and railway regulation, and I never had so few complaints and my company never had so many friends as it has to-day; and I want to say further, and to lay great stress upon it, that my observation of the complaints, and of what has been said before your committee, is that complaint comes primarily from the man who has no right—legally he has, but as a matter of fact he is a man who never pays the rate—the middleman. Nine-tenths of all the complaints we have had comes from the man who says to himself:

If I can have this rate changed so as to bring this traffic to my city I can get a commission on that business, and if it goes to Minneapolis or some other place I can not.

Mr. RICHARDSON. It does not come from the producer?

Mr. BIRD. The producer has very few complaints, and I want to say that the theory usually advanced by professional complainants, that the producers, the farmers, the little manufacturers and shippers are held in terror by the railroads, is utterly false.

Mr. BLYTHE. I would like to have you refer to the testimony taken by the Interstate Commerce Commission in Chicago as illustrating the effect of competition in bringing about the conditions you refer to.

Mr. BIRD. It is notorious that the railway officials, or many railway officials in Chicago, last January—and I must admit that I was one of the number—testified that they had violated the law in conceding rates to shippers which were not provided by the tariffs. I refer to the packing-house traffic.

Mr. RICHARDSON. That was a rebate system?



Mr. BIRD. That was the rebate system, so called. The shippers obtained lower rates than were published.

Mr. RICHARDSON. Why do you give the rebates to one interest, or were they given to one interest, and not to another?

Mr. BIRD. They were given to all alike.

Mr. RICHARDSON. Then who had a right to complain?

Mr. BIRD. I am not lawyer enough to discuss that from a purely legal standpoint, and I am not willing in any degree to assume to defend the practice of conceding rates that are not duly published, even if they do not result in undue preferences in favor of one person against another. I believe thoroughly that all rates used by the public and the railroads should be duly published, and the only safety lies in that proceeding. Any other method leads to corruption and that which destroys one man's business and builds up another's.

There is no possible deflection from the straight line in that direction without leading to abuse. But the actual practice itself did not, I believe, in a single instant result in one shipper getting a lower rate than another. The competition there originally was between localities. Kansas City is the great packing-house point of the West—the largest. Atchison, Leavenworth, St. Jo—St. Jo especially is an important point—South Omaha is perhaps next in importance to Kansas City—Sioux City, and St. Paul. Many roads reach Kansas City that do not reach these other points; some of the roads reach all the points. The St. Paul company's lines reach all Western packing points except Atchison and St. Jo.

There was a continual strife between not only the carriers, but the merchants who handle live stock. They wanted the rates arranged so that the packers in their towns could buy live stock freely.

It is asserted that one town is reaping an advantage, and then a man whose road is reaching only one or other of these places, in a weak moment, says: "It is absolutely necessary that I get a part of this," and he gives a secret rate. And it is absolutely futile to expect that a private rate conceded to an industry like that can be kept private. You may not be able to prove it, but it is inferred in a short time with absolute certainty, and the knowledge of that spreads like summer sheet lightning, and everybody and everything is involved, and if you do not put yourself on an equality with the other carriers and other markets, your business is gone in a night. It is not like a steamboat, which a man can tie up to the shore if he has not business for it; but you must run your railroad business anyhow. The public have a mighty power, and they exercise it. It is the cause of this disgraceful condition revealed in the investigation by Chairman Knapp and his associates.

Mr. BLYTHE. I wish simply to state to the committee, if they will permit me, one thing.

The point I want to have Mr. Bird emphasize is that during a long period not a single pound of packing-house products or dressed beef was moved east from the Missouri River except upon the secret rebates, and that was disclosed in the first case, where it was admitted in Chicago, and it was said that that was the result of the very stringent, strenuous competition existing not only between railroads at Kansas City, but also between Kansas City itself as a producing market and its rivals in the same trade.

I thought perhaps I could state that more briefly than by asking Mr. Bird to state it.

Mr. BIRD. That is correctly stated.

The fourth reason alleged for the immediate passage of the bill pending seems to me a great fallacy, and it seems to me to have been stated frequently without proper consideration of the facts. It is, that for the first ten years, under the law, the carriers as well as the commissioners and the public understood that the commissioners had the power then which it is now sought to confer upon them by the pending measure, the power to fix rates upon any commodity after investigation of a complaint; that their orders were complied with and that the railroads and the public and the Commission were satisfied. That is what you may properly infer from what has been stated.

I would like to read a brief extract from the Interstate Commerce Commissioners' report for 1891. The act was passed in 1887, and, practically speaking, it was hardly in effect until the beginning of the year 1888. Of course, it was in effect upon its passage, but the machinery was not in working order. In 1891 the following appeared on pages 14 and 15 of the report for that year:

The Commission, not being invested with power to enforce its own orders, is dependent for the efficiency of such execution and enforcements upon the courts.

That was practically in the third year of the law. That comment is followed in that report by references to many cases upon which the Commission had issued orders which the railroads refused to comply with. So that it seems to me that the argument which was elaborated so much upon in the earlier investigations before this committee may be set aside.

It may be true that it was not for ten years, more or less, that a distinct opinion was rendered by the Supreme Court. It is a fact that before that decision the orders of the Commission were not by any means always enforced. I think it very likely, and in fact know it to be true in the district in which I am acquainted, that in most cases the railway companies are glad to act upon the recommendations or orders of the Commission; and it is only when some vital principle is involved upon some matter, perhaps of apparently little consequence, but of great importance as a precedent, that the railroads are disposed to stand upon what they conceive to be their lawful rights.

Another unique argument in support of a unique measure is that the railroads enjoy the right of eminent domain, and that that is a sufficient reason for depriving them of all other rights. That matter has been touched upon very ably before the committee, but I wish to add a word or two to what has been said, and to repeat what has been said, that the right of eminent domain is conferred upon the carriers, not for any benefit to the carriers, but because it is essential to the welfare of the American people, and that without that right being conferred upon the carriers the American people must suffer great loss and inconvenience. It is not conferred upon them as a matter of favor.

Assuming that the right of eminent domain gives the Congress, or any judicial body, the right to regulate interstate traffic, here is a suggestion which I wish to make: If a railway company seeks to enter upon and use the property of some individual, a private person, it is not permitted to do so until it has either agreed with that person as to the price which shall be paid for it or until the price has been defi-

nately determined by the legal process of the courts and paid to the owner of the property.

Here is a case where it is proposed to enter upon the property of the railway company by private individuals or by the public—which is but an aggregation of private individuals—to take possession of that property, and then find at some time in the future whether it has a right to do so or not. And when that determination is reached, the property has been confiscated—in whole or in part confiscated—so much of it as involves a reduction of its rights without any possible hope of a remedy or of compensation to the owner of the property; and if the public—if the private citizens—can not be deprived of their rights until the courts have determined the value of those rights, why should the public or private citizens obtain possession of the property—the essence of all railroad property—until the courts have decided that it is right, unless the owner of the property, the carrier, admits the justice of it, or, in other words, agrees with the person as to the price to be paid.

Mr. RICHARDSON. Is not that upon the theory that the railroads perform governmental functions, and in the performance of these governmental functions they should be expected to discharge their duty in the same manner as the Government; is it not upon that theory?

Mr. BIRD. I do not know. I should prefer that that question should be asked of a lawyer. But this much I will say, that aside from all I have said in respect to the right of eminent domain, there is this fact, that the carrier pays an exceedingly high price sometimes for that right. The private carrier, or a carrier by water, which Congress does not assume to regulate—

Mr. RICHARDSON. I simply called your attention to the fact of the distinction, as I assume it to be, between the individual and the Government, as to the right of eminent domain as exercised by the individual and by the Government.

Mr. BIRD. It may not be exercised as a governmental function. The carrier does perform a governmental function, but he has a right to be paid for that performance; and there is the question, Shall he perform that governmental function without due compensation? And he does pay a price for the right of eminent domain which nobody else ever pays. The private carrier, not being satisfied with the volume of business, can tie up his vehicle and not perform any service; but the common carrier must continue to run; must perform that service whether he wants to or not. These functions must be performed continuously to pay for the right of eminent domain, and sometimes for a year that service is performed without any profit whatever or at a loss, and that may leave the stockholders in bankruptcy some lean year.

But the carrier must perform those functions, and carry the passengers and all the property intrusted to its care with reasonable celerity and dispatch, although it may not be able to get one-half of the cost; but if the carrier gets back only 99 per cent of the cost of carriage, there is no reason why it should be taxed that 1 per cent.

The CHAIRMAN. If you will submit to an interruption, we will bring this hearing to a close at this point, as we wish to have a brief executive session of the committee.

(Thereupon, at 11.50 a. m., the committee went into executive session.)

INTERSTATE COMMERCE COMMISSION,  
*Thursday, May 1, 1902.*

The committee met at 10.30 o'clock a. m., Hon. Loren Fletcher in the chair.

Mr. FLETCHER. Evidently the chairman is detained somewhere for a few moments, and I think we had better proceed. Mr. Bird, will you resume your statement where you left off on Tuesday?

**STATEMENT OF MR. A. C. BIRD—Continued.**

Mr. BIRD. Mr. Chairman and gentlemen, the greatest stress laid upon the necessity for the measures proposed by the proponents of the bill has centered largely under two heads. I refer especially to the various statements or arguments made by several Interstate Commerce Commissioners.

It was announced with considerable force first, that rates were advancing; that not only had the general volume of business largely increased in the last year or two, but that the rates per ton per mile had advanced. One of the commissioners said that the statistics of his office showed this to be a fact. I am not quite clear as to the precise phraseology. I have not the same means, or in fact any means at the present time, of knowing the aggregate results of the operations of all the roads in the United States. What was said may be true with respect to the group of roads lying east of Chicago, east of the Mississippi River, and north of the Ohio River. What are known usually as the Eastern trunk-line roads are great carriers of tonnage, and I do not know and can not know at this time the precise results of their operations during the last year.

Speaking, however, for the railroad company which I represent, and for the group of roads in the Middle West, of which the St. Paul company is a fair type, I wish to renew the denial I made day before yesterday, and to reassert that the rate per ton per mile is decreasing, and to say that that fairly represents the general conditions in the Middle West. I wish to give to this committee a very brief statement of the facts regarding that particular subject.

For the fiscal year ending June 30, 1900, the St. Paul company hauled 3,357,456,584 mile-tons, and it earned on that traffic \$31,287,566.16, the rate per ton per mile being \$0.00930. The operating expenses of the company for that period was \$26,729,608.04.

Now, the operations of the succeeding year, which is the latest period for which we have the statistics were as follows: Mile-tons, 3,639,977,919, upon which was earned \$31,444,279.12. The operating expense of the company for that year was \$27,251,723.51, an increase of mile-tons of 282,521,335; and the increased tonnage brought an increased revenue of \$156,718.96. But the increase of expense of operations for that year was \$577,884.63. The rate per ton mile on the operations of the larger business was \$0.00069, a little more than 7 per cent decrease.

As I said before, this is a fair representation of the condition of affairs in the Middle West in all those so-called larger systems of road, and it fairly represents, in fact, all the smaller roads in that part of the country.

Mr. WANGER. Will you pardon the suggestion that that possibly does not answer the contention of the Commissioners. As I recollect their testimony, it was that there was no decrease in the rate per ton per mile of tariff charges and that the decrease in the cost of moving freight was brought about by reason of the very much greater increase of volume of cheap freights as compared with those paying high rates, and the illustration given was something like this: Nine tons are moved at \$1 and 1 ton at 20 cents, and that gives you an average tariff of 92 cents. Another year 1 ton is moved at \$1 and 9 tons at 20 cents, and you have an average rate of 28 cents, or a decrease in the cost of freight; the cost is less than one-third in one instance from what it is in the other, and that without any reduction in the rates, the difference being in the character of the freights hauled. Now, I understand your figures go simply to the gross amount of freights carried, and therefore we can not tell whether your tariff rates were reduced or remained the same.

Mr. BIRD. The figures which I present to you are prepared upon precisely the same lines as are the figures which go to the Interstate Commerce Commission. In other words, all they have in their possession is what they have taken from the figures which I have, which have been sent to them. The hypothetical proposition might be true, but it has not been proven. It is a mere hazard. If the supposition is correct, perhaps the deduction is correct, but there is nothing to show that the supposition is correct.

Mr. WANGER. My recollection is that the commissioners referred distinctly to the tariff schedules there.

Mr. BIRD. I will say something later upon that question.

Mr. WANGER. I assumed that you would want to meet the question.

Mr. BIRD. Yes, sir; but I have facts which I want to present. The next subject in my mind is the assertion that competition has disappeared, and that four or five men in New York may sit around a table and control the traffic destinies of this country; that the companies which were referred to are said to have practically merged the rate-making power into the hands of a very few men; that the result which is now apparent, and which there should be fear that it will be more apparent and more effective hereafter, is the disappearance of competition. Now, it was assumed by one of the commissioners, and I think it was Mr. Clements, that the mere maintenance of rates—that is, the effective prevention of secret preferential rates—would result in an increase of the revenues of the railways of the United States of \$20,000,000 a year. The assumption has been all the time that the revenue of the railway companies was reduced largely by secret preferences.

Of course, whatever amount was really paid out in that manner was so much off of the net rate, but the deduction is that the prevention of private rates—departures from the tariff—will in itself result in an enormous increase of the charges which the public must pay; that it will result also in a higher rate per ton per mile and a higher rate of profit to the stockholders.

I have been absent from my business since the 15th of March. I was called from a vacation trip to Washington, so that I have not been on the ground since the 15th of March. Very shortly after that period, or during the latter half of March, the regulation of railroads by injunction was first undertaken, and the roads in the middle West are under injunction, which has been the most effective means that I

have ever heard of—in fact, quite effective—of putting a stop to abuses that have been so bitterly and justly complained of. It is not likely that railway magnates will risk a violation of the orders of the court. The remedy and the punishment is much more swift than it is in any other case, and I have proof that the injunctions are being respected.

Now, I obtained yesterday from the archives of the Interstate Commerce Commission the record of the open published tariff reductions that have been made since the injunctions took effect. It covers a period of about thirty days. The rates, which are now published and sent to the Commission and spread broadcast through the land, are substitutes in large part, if not entirely, for the practices which previously prevailed and which are now enjoined. They not only carry out in effect the reduced rates which were probably made by unlawful means, but being public in the hands of the Commission and of the public are much more widespread in their results than any secret rates could be. They are widespread—I mean as to the effects upon the revenue of the carriers—because being public they apply at all intermediate points. For example, private reductions between Chicago and St. Paul benefited a single shipper, but the rates now public apply to all shippers at Chicago and at St. Paul, as well as to all shippers at intermediate points whose rates had been greater.

Those reduced tariff rates are reported direct by the roads in interest, and I find that in about thirty days, including Sundays, which ought not to be included, there was an average of fifteen and one-half reductions per day. That does not include any of the reductions at intermediate stations which are brought about by publicity and by the operation of the long and short haul provision of the interstate act, so that there are an infinite number of reductions going on all the time from which the public are receiving a benefit and which have a potent influence in the reduction of the rate per ton per mile.

Now, it is a fact demonstrated by long experience that this process proceeds with increasing rapidity, and no matter what supposed combinations of railway ownership have been made, no matter what theory may have been drawn from those combinations, the fact remains that these reductions are going on with increasing velocity. These facts which I submit to you are not surmises, but actual information from the office of the gentlemen who say that competition has ended, from public records.

Mr. Chairman, when the interstate act became a law it was believed that it would prove to be a remedy for the evils of transportation—all the evils complained of. The testimony of the gentlemen who have been in charge of the execution of that law is that it has accomplished nothing which it was intended to accomplish; that it was a failure.

Mr. COOMBS. They claim that it was a success up to the time when the Supreme Court said that they did not have the powers which were originally contemplated under the act. As I understand, that is the position of the Commission. I do not think they claim that it has always been a failure.

Mr. RICHARDSON. Did not Judge Knapp admit, in answer to a question as to what improvement had taken place as to the commercial relations between the railroads and the public during the existence of the interstate-commerce law, that he did not know whether there was much improvement or not?

Mr. COOMBS. The position of the Commission is, as I understand,

that it was a good act, so far as its administrative qualities were concerned, until the Supreme Court deprived them of the power which they thought they had.

Mr. BIRD. May I read again a brief sentence taken from t<sup>h</sup>e report for the third year of the Commission, which I read the other day?

Mr. COOMBS. I do not want to interrupt you. I just wanted to lay stress upon that point.

Mr. BIRD. Not at all.

Mr. COOMBS. I thought your declaration was at variance with and contradicted what the Commission had stated——

Mr. BIRD. I do not wish to do that, because I have personally a very high regard for the gentlemen themselves, and I think they have labored earnestly and honestly and faithfully to enforce the law.

Mr. RICHARDSON. But the record will show that that very question was asked of Judge Knapp as to what was the improvement, if any, in the commercial relation of the railroads and the traffic of the public, if any improvement had taken place within the last ten years.

Mr. BIRD. And his reply was——

Mr. RICHARDSON. I understood his reply to be substantially that there was not.

Mr. BIRD. Certainly. I understand that from the general tenor of his testimony; but here is a sentence taken from the report I have mentioned:

The Commission, not being invested with power to enforce its own orders, is dependent for the efficiency of such execution and enforcements upon the courts.

That is on pages 14 and 15 of that report, and this statement is followed by a long list of cases, long even for that early date, which had not been enforced, and in which the railroads had not complied with the orders. This is a matter of record, and the committee has this record at its orders at any time.

Mr. RICHARDSON. I understand from you, if you will allow me to interrupt you, that your opinion is that within the last ten or twelve years, under the existence of the Interstate Commerce Commission, there has been a gradual improvement and a better understanding as to traffic matters between the railroads and the public, and that to-day it is in better condition than it has ever been.

Mr. BIRD. I believe there is a better understanding between the railroads in all parts of the country and the people than ever before, and the existence of the act may have been one of the causes which led to those conditions; but, as a matter of fact, it is notorious that the law itself, the principal purpose of the law, has been defeated, or has failed of accomplishment; and I want to say here, as a digression, if you please, the reason I have studied that question, and I have endeavored to ascertain the reason.

Mr. RICHARDSON. Is not another reason that in addition to the interstate-commerce act, whether it did any good or not, there is an irresistible rivalry which brought about these conditions——

Mr. BIRD. But there was another cause, I wish to impress upon the minds of the committee. Every act essential to the enforcement of the interstate-commerce law is specifically prohibited by law.

Mr. RICHARDSON. Is it not a fact that there is competition to-day in the traffic of railroads?

Mr. BIRD. Yes, sir; and the building up of the great systems of roads simply intensifies that competition.

Mr. RICHARDSON. Does not that tend to bring down the rates?

Mr. BIRD. It tends to bring down the rates.

Mr. RICHARDSON. It does bring them down?

Mr. BIRD. Yes, sir. Is there anything further on that point?

Mr. RICHARDSON. No, I think not.

Mr. BIRD. I wish to be as brief as I can and at the same time to be intelligent in this matter. I want to review briefly the reasons offered to this committee why unusual methods, unusual as a matter of equity to the property interested, should be adopted, why railway property should be placed upon a different ground from any other property, and why it should be deprived of the right granted by the Constitution to all other property.

The first point raised in the earlier hearing before this committee, upon which the most stress was laid, was the existence of an evil which is not denied, the evil—the crime, if you please—of secret preferences; and I have attempted to show that the measure which is proposed does not and can not touch that point. I have suggested, as others before me have in a more able manner, a modification of the law which in my judgment, drawn from a long experience, would go further toward the removing of that evil than any other act, and that is to remove the penalty from the individual, from the railroad official, the agent who acts and who is required, or supposed to be required, to so act, and to put the penalty upon the corporation, so that the corporation itself and all of its employees would immediately be constituted a corps of detectives more efficient than any which I think the Government can command.

Mr. RICHARDSON. Now, you believe that that is a remedy by which this secret practice of rebates which is local to a great extent would be removed?

Mr. BIRD. I believe it would be a most efficient remedy.

Mr. RICHARDSON. This bill does not provide any remedy which will reach the rebate system at all?

Mr. BIRD. It does not; and yet the bill is defended and advocated strenuously by gentlemen because of that very feature.

Mr. RICHARDSON. No witness has been here who has been able to point out any remedy which this bill provides for the evil of rebates.

Mr. BIRD. I understood that the suggestion which I have just made has already been made.

Mr. RICHARDSON. Yes; but this is the Corliss bill—

Mr. CORLISS. The provision for the punishment to be inflicted upon the corporation rather than the individual—

Mr. BIRD. Does it not leave the individual penalty still?

Mr. CORLISS. It leaves, of course, that punishment. The accessory of a crime is not excused.

Mr. BIRD. If I committed that offense would it not, under the bill, subject me to the same punishment?

Mr. CORLISS. In addition to the punishment on the corporation?

Mr. BIRD. Precisely; and it does not remove the main difficulty that the courts and the Commission have had in obtaining evidence to convict the guilty parties.

Mr. CORLISS. I did not intend to ask you any questions till to-morrow, but as we are discussing that point I will ask you right there, Do you contend that it would be wise for Congress to enact



legislation confining the punishment under the act solely to the corporation?

Mr. BIRD. So far as the carrier is concerned, I should say that the corporation should be the only one to be punished.

Mr. CORLISS. True. But would you not also include the shipper who willingly, knowingly, and surreptitiously tries to evade the law?

Mr. BIRD. I think so. I think the beneficiaries are the ones to be punished always.

Mr. CORLISS. That is what I desire to obtain. You eliminate the officers of the corporation and hold the corporation; that is, as well as the shipper or consumer, or the consignee.

Mr. BIRD. Yes; he is benefited by the crime.

Mr. CORLISS. Certainly; that is what I thought.

Mr. SHACKLEFORD. That throws him out as a witness.

Mr. BIRD. You will not need his testimony.

Mr. RICHARDSON (reading):

Every carrier, or the receiver, lessee, trustee, officer, or agent of such carrier, neglecting or refusing to obey such order shall also be subject to a penalty of \$10,000 for each and every day which he or it is in default, said penalty to be recovered for the use of the United States in an appropriate suit brought in the name of the United States in the circuit court.

You do not approve of that, of making the agent responsible for the penalty of \$10,000?

Mr. BIRD. Certainly not.

Mr. RICHARDSON. When a man goes to an agent and wants to get as cheap rates as he possibly can, the agent is not supposed to know all the workings of the road, of the head men on the railroad, and when this man comes to him and asks him for a lower rate, he lets him have it. It would not be just and fair to put a penalty of \$10,000 on that agent?

Mr. BIRD. Or any other penalty, I think.

Mr. RICHARDSON. The penalty ought to be imposed upon the corporation.

Mr. BIRD. Mr. Chairman and gentlemen, I have been connected with the railway service since the close of the civil war continuously, from the position of night watchman or freight handler to my present occupation, and I have yet to know of the first case where an officer, no matter what his rank, or an agent of any company, has knowingly gone contrary to the orders of his corporation; and it seems to me that it is hardly just to punish one whose official existence, whose livelihood is at issue, and who must act in obedience to the orders or the wishes of his employer, when he can not be a beneficiary in any sense of the word. I think it is right that the rule should be that those who are benefited by an offense should be punished, and those only.

Mr. RICHARDSON. There is another paragraph here:

Every carrier, every lessee, trustee, receiver, officer, agent, or representative of a carrier who knowingly violates any provision of this act, or fails to perform any requirement thereof, for which no penalty is otherwise expressly provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one thousand dollars nor more than five thousand dollars for each offense.

Mr. BIRD. Are you reading from the Corliss bill?

Mr. RICHARDSON. Yes, sir; that is the only one we have here.

Mr. BIRD. I have not been able to read and study that carefully so as to familiarize myself with all its provisions. I am only speaking

of the general understanding, of the general purport and effect of the bill, and I am quite confirmed in my opinion as to the manner in which the penalty should be imposed and of the effect of attaching the penalty, so far as the carrier is concerned, to the corporation itself. In the first place, the corporations themselves would be the strongest power in support of such a provision as I have spoken of. It would not permit its agents to make the treasury of the company liable to such heavy penalties, and if an officer or agent carelessly or otherwise subjected it to that loss, it would end his official connection with that company. A company will not employ people who subject it to such losses.

Mr. RICHARDSON. Do you not think that if that agent is made liable to the penalty that the man who goes and gets the benefit of a reduced rate from him, the shipper, should also be liable to a penalty?

Mr. BIRD. I think that in any event the man who benefits by crime should suffer the penalty.

Mr. RICHARDSON. Would not that be very drastic and severe? Should not the penalty be put upon the carrier and not upon the shipper?

Mr. BIRD. I am not so sure about the shipper, and it may be that if the shipper was exempt it would be easier to convict the corporation, or to enforce measures of prevention. I am not prepared to argue the point as to the propriety of punishing the shipper who benefits by a violation of law—

Mr. RICHARDSON. An illustration has been used here before this committee, and I will repeat it to you. Suppose that I should go to the agent of a railroad and have goods shipped to a certain point, and a rebate or drawback were to come back to me, and I were to receive it after the shipment; would not that under this law make me guilty, although I might not have known a thing about it when I did it, and the agent might not know a thing about it? Would I not be an accessory after the fact, if nothing else?

Mr. BIRD. I have never supposed that in that case the shipper could be made responsible. I have believed that the shipper and the public and everyone is supposed to know the law in regard to the prohibition of a certain act, but I have never taken it for granted that every shipper should know every rate in the country and be able to tell at sight if he was violating the law.

I have never supposed that anyone was guilty except for criminally violating the law. It is supposed that a man should know when a rate is published, if it is well and duly published. I myself, in my position, would not undertake to quote a rate one time out of a hundred, and it would take me a long time, even in my own office, to know what a rate is. I do not know. But there are men who are experts, and can tell in a moment; it is their business to do that. And I have never supposed that a man receiving an unlawful rate unknowingly should be deemed guilty or punished.

Mr. RICHARDSON. The point with me is that it strikes me at present, from what I have been reading here, that the remedy to be applied, and the penalty to be applied is against the corporation and no one else. If that can not stop it, if that can not stop the very system you say you do not indorse, the payment of rebates, if that is a private offense, and secret, there is nothing else, it seems to me, which can stop it in the power of the law. You can not take a little agent and

punish him, or a shipper and punish him. I understood from you that your disposition was to believe that the penalty should be aimed at the corporation.

Mr. BIRD. I am quite clear in my opinion that the penalty should be removed from the employee, and should be levied against the corporation. I am not clear in my mind as to the expediency of removing the penalty from the shipper, who receives a benefit from a crime which he proposes and aids and abets. That, I think, is a question of policy or expediency. The main object to be acquired is to find some means by which the practice itself can be stopped. Now, it is essential, in my judgment, that the fine and penalty be taken from the official, the agent, or employe of the railway company and levied directly upon the treasury of the company or the corporation itself. That much I am clear upon.

Mr. RICHARDSON. The trouble that I have individually on that matter is, I do not see why a citizen should be prohibited from going to a railroad and making the very best terms that he can with it about the shipment of his goods. We all do that. But now the only way that you can provide against that weakness upon the part of the railroad is by putting a penalty upon it, and the shipper should not get the benefit of it.

Mr. BIRD. But if it is legitimate under the circumstances for an individual shipper to shop around and get the best rate that he can from a carrier, the carrier claiming to be a public servant and performing a public service, why is it not legitimate for the carrier itself to shop around and get business on the best terms that it can get it?

Mr. RICHARDSON. Because there is a difference between the common carrier and the shipper for this reason: That the common carrier performs governmental functions, quasi at least.

Mr. BIRD. It is either a crime or it is not; and, if it is a crime those accessory to it, instigating it, or benefiting by it should be properly punished.

The CHAIRMAN. Probably it might be that the corporation, which has no soul, should be required to exhibit the higher degree of morality.

Mr. BIRD. Possibly. But the crying evil is there, and means ought to be devised to stop it, and I believe one of the most effectual remedies is to take the penalty off of the agents, the servants, and put it upon the master; that the master himself, who, it is claimed, is the all-pervading power through the land, shall be arrayed against the crying evil, shall use its force, all its energy, to stop it, to give to the Government an army of 100,000 or 200,000 trained men who are vitally interested in bringing the guilty to justice.

Mr. RICHARDSON. Put it in the hands of the agent to give the shipper opportunity to come in and ask for these rates, and that gives him an advantage over the shipper. I am disposed to exempt them both from punishment, and put it all on the railroad.

Mr. BIRD. I am not prepared, and I do not think I am competent, to discuss that, because in a large degree it must be a matter of expediency, or of the surest means of getting the proof that you want. Is there anything further on that?

Mr. RICHARDSON. Nothing further.

Mr. BIRD. Now, aside from this admittedly great evil—crime, if you please—of secret rates, the principal reason urged for the bill is the fact of these combinations, so-called consolidations, which it is

alleged will ultimately result in the disappearance of competition. I am rather surprised, that fact being proved, at having the proponents of the measure press that point so strenuously, when I look at the measures which are proposed. Aside from the secret preferences, it is a well-known fact, and admitted, I think, and urged here before you, that the great burden of complaint under the interstate act arises from unjust or excessive differentials; that is to say, that rates are relatively unjust—rates that may in and of themselves be just and fair become unjust and unfair when compared with other rates. The contentions with which we have been confronted during the past fifteen or sixteen years, or during the whole history of this law, have been between communities.

If you please I want to refer again to the Milwaukee Chamber of Commerce wheat-rate case as illustrating the inconsistency of the views which have been advanced in favor of placing unusual power in the hands of the Commission as to the making of rates. Please bear in mind that the relative differences constitute the base of a very large proportion, I should say more than three-fourths, of the complaints which have come before the Commission officially. Now, we will say that the rate on wheat from Pipestone, Minn., to Minneapolis, which was complained of, was 10 cents per 100 pounds, and that the rate to Milwaukee from the same place was  $17\frac{1}{2}$  cents; that made a differential of  $7\frac{1}{2}$  cents in favor of Minneapolis. The Milwaukee Chamber of Commerce contended that the  $7\frac{1}{2}$  cents differential was excessive; that it resulted in diverting an undue proportion of the traffic to Minneapolis. Minneapolis responded (and it had the same right that Milwaukee had), and said that the differential was fair; that it was the unusual energy and the great combination of milling facilities and its location which gave it an advantage, and they said, "We are entitled to the benefit of our location."

This bill provides that in all controversies where the differential is at issue, where the rivalry is between two communities, that the Commissioners shall have power over the minimum rate, and can prohibit and prevent reductions. If that was not provided, please understand that the Commission could not regulate or enforce the differential according to its judgment, and there is no power, no body, judicial or otherwise, that can regulate a differential unless it shall have absolute power over the minimum rate, because it might say, "The Milwaukee differential of  $7\frac{1}{2}$  cents is  $2\frac{1}{2}$  cents in excess of what it ought to be." Now, how should that be adjusted? It is patent that it could not be brought about by the advance of  $2\frac{1}{2}$  cents to Minneapolis. There is no tribunal that would dare say, "Advance your rates to Minneapolis." It would be contrary to public policy admittedly. Therefore the rate to Milwaukee must be reduced  $2\frac{1}{2}$  cents, so as to leave the differential to Milwaukee only 5 cents.

Now, here are a number of railroads concerned solely between the wheat belt and Minneapolis, and they say justly:

There is one thing which is worse than low rates, and that is no business, and while 10 cents per 100 pounds is a reasonable rate per se and as such stands unchallenged, and as such does not yield an undue tribute to the carrier, circumstances may arise and may arise in which a  $7\frac{1}{2}$ -cent rate will be reasonable, and that carrier says, "If I do not reduce this 10-cent rate I lose the business," and it reduces it  $2\frac{1}{2}$  cents.

The whole wheat belt of the Northwest in such an event would be the beneficiary. The people who would suffer by that movement

would be a few people, comparatively, in Milwaukee. Is it for the common good; is it good public policy to deprive the country of that strongest element of competition? Please bear in mind that the strong reason urged in favor of the giving to the Commission of this unusual power is that competition must continue, and there is no other way to continue it; and the very measures they propose are measures that will throttle it more than anything that has ever occurred or is likely to occur. It is not a strange case, or an imaginary thing. I have seen it worked out year after year, and I know that I speak within reasonable limits. We cite to you another practical instance. The rates from Chicago and Milwaukee to the Northwest are upon the same basis, say, to St. Paul. There is a difference of 85 miles in the haul, but the location of the various lines of transportation by rail, and partly by rail and partly by water, make it necessary that the rates from Chicago and Milwaukee to St. Paul and Omaha, and all the river points and the Pacific coast, should be the same. Those are just reasons and never have been brought into question.

The CHAIRMAN. Will you state some of those reasons? Some of the committee perhaps do not realize them.

Mr. BIRD. Rates from New York, Atlantic Seaboard, and Eastern Trunk Line territory to Milwaukee via all rail routes and rail-and-lake routes are the same as to Chicago. The all-rail rates from New York via Chicago to Milwaukee are the same as to Chicago, because lines east of the east shore of Lake Michigan run their cars through to the east shore, all rail, and thence via car ferryboats, without breaking the bulk, to Milwaukee, the distance via such routes being no greater than to Chicago, so that rates to the two cities are the same, and this is true as to rail-and-lake business in connection with car ferries to Manitowoc, Wis., and it is substantially true as to the same class of transportation to Marinette, Wis., and Menominee, Mich. Further, it is true as to break-bulk business, lake and rail, to Green Bay. This being the case, it is necessary, in order to preserve equality of through rates via the various routes, to apply the same rates from Milwaukee to St. Paul and to Missouri River points as are made from Chicago to the same points, even though the haul from Milwaukee westwardly is in some cases greater and in some cases less than the haul from Chicago.

It is the only possible way to equalize through rates and prevent discrimination.

Now, St. Louis is a strong rival of Chicago and Milwaukee. It is nearly twice as far by rail from Minneapolis or St. Paul to St. Louis as from Milwaukee. A controversy commenced as far back as the late seventies as to what rates should be made from St. Louis on the one end and Chicago and Milwaukee on the other. A railroad-rate war ensued that cost many thousands of dollars, and still the question was not settled, and it was finally compromised, and a differential of 5 per cent was agreed upon ten or twelve years ago, I think. On low-grade freight a difference of less than 1 cent per 100 pounds was the result, and that is very aggravating to the people interested in shipping from Milwaukee to St. Paul.

Now, who shall say that a board shall be clothed with power to say that the rate from St. Louis to St. Paul shall not be less than so much? The pending measures are intended to make it possible to institute a definite rate which must stand for two years no matter what happens, and no measures ever proposed could more effectively prevent com-

petition. I could occupy your time indefinitely citing you practical cases of this kind. What the railway company may want in defense of its own property and what may be reasonable to-day, and what it may need and find justification for to-morrow, is quite a different thing. We are subject to all the changes of condition and circumstances that all other people are. But the fact remains that the remedy which is proposed as a guard against the disappearance of competition is the remedy that does not permit competition.

There are two or three items that have been elaborated upon before this committee which I wish to touch upon. The cases which have been referred to have also been very strenuously urged as reasons for the adoption of a measure which we consider unique and unusual.

There has been great controversy and contention and bitterness in some cases because of the difference between the rate on wheat and the rate on flour. Of course the subject is introduced always and pushed by the miller or his representative. Before explaining or attempting to explain why these differences exist, and may possibly exist hereafter, I wish to announce plainly my own view on the subject as to expediency and good policy, the same as I have heretofore announced it under oath in examinations by the Interstate Commerce Commission. I believe, and have always believed, in the general policy of promotion of the industries of the United States. The same line of reasoning leads me to prefer that the rates on wheat and flour shall be such as to encourage the manufacturing of the wheat into flour by the citizens of this country. It makes other business; it enlarges our traffic; it builds up communities; it does all of those things which a railway corporation wants done upon its own lines, and what may be true in regard to this subject as to the farm supplies is very likely true as to every road in the land. It is to the advantage of the St. Paul Company that Minneapolis, the greatest milling center in the United States, should prosper.

We carry from 50 to 100 carloads of flour out of that city every day in the year, almost, certainly during the busy season even more than that, and we carry the raw materials of the business, and all the supplies that go into the business; and more than that, we carry the people and the supplies for the people who are engaged in the business, which is a greater item of traffic. And so I want to make my opinion and judgment in the case well known, because there are valid reasons why the rate on wheat may be lower than on flour, and I want to say that they are influences which the railway companies can not resist. Possibly they may for a time, possibly in an emergency, but not wholly, nor for all time. In the first place, the character of railroad equipment has changed rapidly within the last five years. The changes have been made in the West, apparently, much later than they have among the trunk lines of the East.

The capacity of the freight cars has been quadrupled, to state it moderately. There are many cars—all the new cars—that carry 80,000 or 100,000 pounds. When I commenced my career as a railway employee, 18,000 pounds was the maximum carload between the Middle West and New York. The tracks, the grades, the rails, everything pertaining to the movement of freight has also improved in quality, so that a much heavier load can be put into a car to-day than formerly. With some exceptions, to which I will refer, it is not customary, it is not convenient, and many times it is not possible, to load a car as

heavily with flour as with wheat. The cars are made to earn much more money with wheat than with flour.

Mr. FLETCHER. Does that apply to the export flour?

Mr. BIRD. I want to make that exception in a moment, Mr. Fletcher.

Mr. FLETCHER. Very well.

Mr. BIRD. The great exception to this rule is in the great milling centers where there is a considerable proportion, perhaps 40 per cent, I am not sure now, of the freight which is export. It is loaded in double bags, and by proper care and attention on the part of the shippers the cars are loaded very nearly to their capacity. In fact, in the large centers an arrangement could be made with the millers, I think, where they should load to a certain stated capacity or pay for it any way provided the rate on wheat were made no lower. That is one side of the question. That is the practical side; not sufficient, possibly, in all respects to justify what has been done.

Now, take Minneapolis as an illustrative point, and it is a very fair illustration, because it is a very large wheat market, and it is one of the largest if not the largest milling point in the country. It is 150 miles from Minneapolis to Duluth. The entire line is within the State of Minnesota. The rates that are made in that State are made without reference to the interstate act, and the lines which extend between those points do what they please provided they do not transgress the State law.

Duluth is equipped bountifully with elevators and every facility for handling grain from the cars to the elevators and from the elevators into the vessels. I have known year after year, at certain seasons, rate of 2 cents per hundredweight Minneapolis to Duluth. Now, a very moderate rail rate from Minneapolis to Chicago is 10 cents; nominally 12½ cents—locally, I mean. When the grain gets to Duluth it goes by water to Buffalo. The carrier may do what he pleases there; it is nobody's business except that of the shipper and the carrier, and nobody can regulate that class of transportation, and it can go into an elevator and go by rail from Buffalo to New York, wholly in the State of New York, and who shall say what that rate shall be there? Or it may go by canal from Buffalo to New York, and then who shall say what the rate shall be? This is not a trumped-up case, as the gentleman from Minnesota knows. This happens every year. He has known it to his sorrow many times.

Now, transportation on Lake Superior and on the great chain of lakes has increased in facility, in its advantages, in its power to move freight cheaply, in a greater ratio of improvement than has been made in the methods of transportation by rail. Why? Because the Government has expended its millions in the improvement of the waterways, in the enlargement of canals and building of locks and dams, and in every conceivable way, which all redound to the benefit of lake transportation, and tend to reduce the cost of lake transportation for the benefit of the people at large and of the producer and the consumer. And we have every year, every season, a large amount of wheat which is moved in that way. You can move wheat from Minneapolis to Buffalo cheaper than a fair rate from Minneapolis to Chicago.

Now, it is proper at certain seasons for the railroads to carry freight at comparatively low rates, and the decisions we have had upon that point convince us that it is expedient for us to make an unusually low rate, provided the rate is sufficient to meet the cost of that particular

traffic, and leave even a fraction of profit for the maintenance of the property. I believe that is a proper policy. It has been justified by the Commission, by Judge Cooley, and the courts repeatedly.

Now, who shall say what we ought to do, not as a matter of policy, if you please, but applied to Minneapolis in this case, who may be injured. What shall be done? There may be 200 or 500 cars that go east to be loaded west-bound. Empty cars must go to Chicago and Milwaukee in that season simply because the wheat comes to Minneapolis.

Mr. FLETCHER. Let me ask you whether it is not a fact that the great milling industry of Minneapolis has probably advanced to the producer of wheat an advantage of 2 to 5 cents a bushel for the last fifteen years?

Mr. BIRD. I have been connected with the St. Paul road for twenty years, and I find this fact, that the St. Paul lines extended into the wheat belt have been successful, and have been built up because the prices paid by the Minneapolis millers for wheat have been higher than could be got, relatively, in other markets.

Mr. FLETCHER. I know that for the last five years that I was in the milling business, up to a few years ago, the average price of wheat in Minneapolis was above the regular market 5 to 7 cents. That is because we receive a better profit on our milling industries than we are receiving now.

Mr. BIRD. Yes, sir.

Mr. FLETCHER. Now, is it not worth while to the producer of wheat to throw protection around such facilities as make for the building up and fostering of an industry like that, which is beneficial to the producer?

Mr. BIRD. It needs no argument to me in support of that measure. I am only trying to show you what gives rise to the conditions complained of in this respect. I am unvarying in my support of the position that you advance. I only want to show to this committee, and to you, perhaps, some of the facts which must have come to your attention, some of the difficulties that are in the way and that cause those differences, which exist and hurt the people, and that there should not be a law passed here which is unjust to the carrier and which in itself can not meet the matter complained of. The Government provides waterways, it encourages all these things which are supposed to tend to the benefit of the people, and so, as I said, there are times when some railroad is justified in carrying wheat at a low price.

Take the line from Minneapolis to Lake Superior. At certain seasons of the year there are large quantities of coal coming down from the lakes. The cars would go back empty but for a concession in the wheat rate, but we can not regulate that; it is local State business. The Interstate Commerce Commission can not touch it. There can be no action brought under the interstate-commerce law, because it is a purely Minnesota question.

Mr. FLETCHER. Before you leave that point, I want to ask you are not all of the conditions that have surrounded the milling industry of Minneapolis (that I speak of especially because that is the largest milling center of the world, handling 78,000,000 bushels of wheat in the last year) and all the conditions that surround this manufacture of flour, including this discrimination that was made of 2 cents a hundred



between export flour and domestic flour—I do not speak of it locally, but of the export flour and the export grain—a discrimination which it is hard for us to contend with and keeps up the price of wheat to a higher level than it would be if that milling industry was wiped out? Are not these things, this discrimination in the flour rate and also this other matter which has been before this committee of the rate on shipments to London and the dock charges there, affecting the milling industries of the Northwest and, in fact, every industry in the United States?

MR. BIRD. I thoroughly believe that the wiping out of the milling industry of Minneapolis would have a disastrous effect upon the James River Valley and a disastrous effect upon the railroads that run the wheat into Minneapolis. That is true, and whenever any disaster has befallen the milling industry we have felt it keenly. But these low channels of transportation exist, by encouragement from the Government largely, and the rate is given and the wheat moves. What injury is inflicted on the milling industry by the railways if they make a rate to move some of the wheat and do not make a rate lower than is already in existence? I think that feature of the case was taken into consideration by the Commission at the time. I am not justified in calling in question the decision of the Commission in that respect, but it is true, I think, that it is to the interests of the railroads at Minneapolis to have the wheat milled at Minneapolis, and any rule or regulation or order of the Commission or any other order which creates the contrary effect, is a direct injury to the railway interests.

MR. FLETCHER. Would not this apply with like force to the grain raiser?

MR. BIRD. If the industry is removed from Minneapolis, the grain raiser of the Northwest will suffer. But that which threatens the milling interests exists without any reference to the railway companies.

That is a point I want to make, and I want to make it in reference to repeated urgent arguments of the gentlemen from Milwaukee—the various gentlemen who dwelt upon that evil, that it is not the act of the carrier. They are not responsible for the condition, the proposed remedy for which is this unusual measure.

Only a few words more, if you please. There are many difficulties and complications that go to make up the railway problem. Railway transportation has been admittedly a matter of evolution for many years past.

There have been many improvements, and in spite of the flagrant abuses that have attached to the system, it is true, and beyond peradventure or doubt, that conditions between the railway people and their constituents, the shippers, have been greatly improved. The passage of the interstate-commerce act originally, and the amendments which soon followed, was experimental. Legislation, as has been stated here by members of this committee, should be a matter of evolution, and not a matter of revolution. It seems to me to be exceedingly unwise and impolitic to undertake at one swoop here to regulate the whole business. It is an enormous business, and is full of ramifications.

One of the greatest aids to advancement is railway energy, railway efforts to develop the country, and there are thousands and thousands of instances where new industries are being constructed, machine shops, elevators, mills, where it is a universal rule to make concessions in the rates—not secretly, but everybody knows it—and never to charge more

than 50 per cent on machinery and other material for the establishment of manufacturing institutions, as the result of which policy one can see a great change in passing over the various roads.

Now, such a proceeding is unlawful under this act. It may be that by inference it would be deemed unlawful under the existing act; but under the proposed law it is absolutely a crime to accept a rate that has not been made public, and these rates are necessarily made from day to day, according to circumstances. There is no iron-clad rule, but people understand that the road is ready to assist in developing the resources of the country everywhere; but they are not published rates, and it is almost impossible, it is not within the bounds of possibility, to construct a tariff that will meet the requirements. Shall that be stopped? The Commission is to be clothed with power to make rates, to ask that the railroad companies make the rates first, that they shall make the initial movement in that, but that ultimately in every case of complaint the Commission shall make the rate.

I have had quite extended experience in dealing with these complaints. The Commission must be consistent. If it makes a decision to-day, it must make one to-morrow that is in harmony with it, and there must be a logical sequence from each decision to the next. The theory which must pervade all such transactions is that each locality must have the benefit of its location; that there must not be taken away from one town the benefit of its nearness to the consumption point. The law says that rates must be relatively just; that there shall not be discrimination between communities.

The only proceeding that could be taken in efforts to comply with this provision of the law, which is an essential one is to adopt a rule which will leave carriers invulnerable against complaints.

They must be consistent, and there is but one way to do it; that is to take the lowest graded distance tariff in the district and measure off the rate according to the distance and say that is to be the rate. If all the railroads belonged to one corporation and there was one traffic manager, there is but one thing he could do, viz: Take the short line between any two points and apply it. In such a case no man could sustain a complaint of discrimination.

If I had the time, or you had the time to listen to the details of this, I could demonstrate to you that that method of making rates——

The CHAIRMAN. Will you not do that? We have time.

Mr. BIRD. I have the time to comply with your wishes.

The CHAIRMAN. We would be glad to hear you upon that point.

Mr. BIRD. It bears closely upon the matter in question. On every line there must be a distance tariff. In the absence of a special or a terminal tariff the distance tariff is the only basis of rates. It stands to reason that that tariff must be constructed on this principle, that the rate per ton per mile must decrease as the distance increases. If it were not so, no matter how low that tariff would be, it would be absolutely prohibitive beyond 50 or 60 miles. As a necessity the rate for a haul of 100 miles must not be as great as for two hauls for 50 miles each. The most aggressive granger legislature would not dispute that point. If it makes a 10-mile tariff, then the tariff for five times that distance should be not five times that tariff, but less, so that the drift is always in favor of the long haul, which is the lowest rate per ton per mile, and it gradually extends until its influence is invulnerable and irresistible.

I remember when the interstate act was passed by Congress everybody thought that the day of jubilee had come, and we could go and adjust our rates in conformity with our then views as to our localities. The people of Chicago, who had claimed discriminations against them in favor of Western competing cities, felt that it was all right, and that they would regain the supremacy which had long since been wrested from them by the jobbers located nearer the Western consumers. The jobbers of the Mississippi Valley expressed the same opinion as against their competitors on the Missouri River and felt the same way, and the first man to suffer was the jobber at Dubuque and Davenport, and all along the Mississippi River. You may remember those times yourself, Mr. Chairman.

But it soon became evident that the rate, say from Chicago to points west of Dubuque, was less than the rate from Chicago to Dubuque, and the rate thence to the farther Western destination. The combination of the two rates barred the Dubuque man, measurably, from competition with the Chicago jobber, who reached over and beyond him. He had the long haul and the lower rate. Chicago thought that was great success; but pretty soon it appeared that Buffalo and Pittsburg and New York and Philadelphia were having the same advantages over them, and then the trouble commenced, and it has continued ever since. The railroads have made every effort to protect and promote the interests of the great cities which they enter, and confusion has ensued.

Now, if the Commission is going to be vested with the right to make rates, it must proceed logically. Its rates must be above complaint; they must be in conformity with the spirit of the law itself. And ultimately—I am not an alarmist; all these things come by evolution—but ultimately these results will follow. These great trade centers are all over the United States. The country is dotted with them. They have grown up and have been made what they are by the rate systems which have grown up around them and made them possible. All this is not in the nature of a revolution. If anybody is to be empowered to make rates, that individual or body must comply with the spirit of the law, and in the end they must ultimately overturn all these great distributing points. That is not farfetched, it is practical, and I have seen it worked out in the last fourteen or fifteen years.

Now, it seems to me, in view of these facts, that this committee, before it proposes to amend the act or to further regulate commerce, should consider that a great evil is clearly defined, that it is admitted on every hand, and threatens the life of our commercial system. If means can be adopted to remove that evil, they should take that step.

I am not altogether sure of the accuracy of my memory in one matter to which I wish to call your attention. The United States is a tremendous country in area, in the diversity of its interests, and the volume of its traffic. It has undertaken to regulate interstate commerce by one act and, I believe, two amendments.

Mr. FAULKNER. One amendment.

Mr. BIRD (continuing). If I am not much mistaken, the English Parliament has upon its statute books over 1,000 acts in reference to commerce. That goes to show the continued experiments that they have made. It does not seem reasonable or just to the enormous interests of the people and the railways to assume by any one measure like this to remedy all the evils that are complained of. Each well-defined evil

should be removed, but there should be no experiments. I do not think that I have anything further to say, unless the members of the committee wish to ask me questions.

Mr. COOMBS. In reference to England, are the railroads operated by more than one company; more than one system?

Mr. BIRD. Yes, sir. I understand that there is a great deal of actual competition in England. I do not think they are subjected to the severe competition that we are subjected to, because, if I am correctly advised, a railroad company is not permitted to build there until Parliament has said that the railroad is a public necessity.

I am glad that you asked me that question, because it reminds me of one other remark I wish to make. The assumed loss of competition is the one great bugbear which seems to have been presented to you as the reason why the proposed measures should be adopted. It has been said that competition is disappearing. I dispute that, respectfully but firmly, but that is the allegation. If what has been said in this connection is true, the only hope for this country is the increased number of rival carriers; and I do not think, Mr. Chairman and gentlemen, that the adoption of proposed measures will in any way encourage the building of new railroads. I am quite sure that if you surround the business with too many restrictions, making the livelihood of these roads impossible, that there would not be much more money risked in enterprises of that kind.

Mr. CORLISS. You are going to attend before the committee to-morrow?

Mr. BIRD. I understand the committee wish me to do so. I will be here to-morrow.

Mr. CORLISS. I will be glad if you would take up what is known as the Corliss bill and indicate the objections to the particular features thereof which you may have—some of them I notice that you approve of. I will be very glad if you will do that?

Mr. BIRD. I will do so with pleasure.

Mr. CORLISS. I will ask you to-morrow to point out the objectionable features of the bill.

Mr. BIRD. I will do so.

The CHAIRMAN. If it pleases you, to-morrow there are two or three matters which I would like to have you discuss, and one is I would like to have you inform the committee, if you will, what are the elements of cost that are considered by you when you fix a schedule of rates.

Mr. BIRD. I would like to answer that right now.

The CHAIRMAN. Our time has expired to-day.

Mr. BIRD. Very well; then I will do so to-morrow.

The CHAIRMAN. I would like to ask you if there is a difference in the cost of transportation produced by climatic changes; for instance, does it cost more in a northern climate to handle freights in the winter season than in the summer—in the warm weather?

As I understand the Commission, they think they should have the power to fix the rates for the entire country, and they have stated that under a given condition, if this act should pass, it would be necessary, or might be necessary, for them to fix all of the rates upon an entire system of railway. Now, is there any middle course that might be adopted there?

Then I would like you to give your views as to what the remedy should be where there is an excessive charge persisted in by a carrier.

Those are some of the matters I thought I would like to hear discussed.

Mr. BIRD. I will hold myself entirely at the pleasure of the committee, but I should like very much to leave on the Chicago limited on Saturday morning.

Mr. BLYTHE. If I might suggest to the committee, perhaps the subject of remedies Mr. Bird is not so well prepared to reflect the consensus of opinion of the railroad companies upon as some of the rest of us who have looked at it more from a theoretical than practical point of view. I simply suggest that because I do not know what Mr. Bird's view is. He may not feel ready to discuss those matters.

Mr. BIRD. I am obliged to Mr. Blythe for mentioning that, because I only desire to present the practical side of the matter, and when it comes to legislation and law and forms and legal rights and wrongs I think that the counsel should take up the burden.

Mr. CORLISS. Sometimes a business head gives us better light than a lawyer's.

Mr. BIRD. I am very much obliged, Mr. Chairman, for the kind consideration which this committee has given to me.

The CHAIRMAN. We certainly feel very much obliged to you for your aid.

(Thereupon the committee went into executive session, at the conclusion of which it adjourned until to-morrow, Friday, May 2, 1902, at 10.30 o'clock a. m.)

INTERSTATE COMMERCE COMMISSION,  
*Friday, May 2, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

**STATEMENT OF MR. A. C. BIRD—Continued.**

The CHAIRMAN. If you are ready to proceed, Mr. Bird, the committee is in session.

Mr. BIRD. Mr. Chairman, just before the adjournment yesterday several questions were suggested, to which I was requested to prepare myself for answers this morning.

Mr. Corliss asked if I would read the Corliss bill and indicate the objections to any particular features of that bill which I might have. I find that I have frequently read the Corliss bill, and in this connection I wish to repeat what I have already said, that I am not a lawyer and that I can not wisely undertake to discuss these questions from a legal standpoint. All that I hoped to do was to present to this committee practical views taken from experience.

My principal objection to the provisions of the bill is as to the power which it is proposed to confer upon the Commission in the matter of making rates, and the conditions under which the orders of the Commission in that respect are to be enforced. I am in sympathy with that portion of the bill which seeks to strike at the admitted abuses that attach to railway traffic, and am prepared to lend my

aid in that direction. The abuse which I refer to is secret preferential rates.

Mr. CORLISS. You call them preferential rates; we know them as rebates.

Mr. BIRD. If a rebate has an injurious effect it has it because it is a secret preference. Our phraseology is "secret preferential rates," and such rates are obtained only by the payment of rebates. I do not know that I can say anything further, Mr. Corliss, on that point, unless you have some other question.

Mr. CORLISS. I would like to ask you if you have any general knowledge as to the judgment of the traffic men as to the wisdom of a measure which will transfer the punishment now inflicted under the law to the corporation itself, as proposed by this measure?

Mr. BIRD. I have been in frequent conference with my associates and competitors, and this subject has been so prominent that I speak with confidence when I say that the traffic men of the country, especially of the district in which I am engaged, are unanimous in their belief that the most effective measure for the prevention of secret preferential rates is to remove the penalty entirely from the official and the agent of the railway company, who can never be benefited by such practices, and let it attach directly to the corporation, so that the corporation at once becomes the strongest power for the enforcement of the act, for the prevention of the offense. It is the universal opinion of traffic men that no traffic official will knowingly violate the spirit of the instructions of his company. If it is made an object to the corporation to prevent these offenses, their instructions will be so plain that every official in the land will be arrayed against the offense.

To elaborate on that point from practical experience, you may take a group of roads, 10 or 15 roads, in frequent conference through their traffic officers to devise as far as they can, means of enforcing the rates, as far as they are permitted lawfully to do it, to enforce the tariff rates and prevent discriminations. Of that group perhaps one road—maybe more, but a minority—is so situated that it finds that it can not get business at even rates, and it indulges in these secret practices which divert the business from the other roads. Instantly all the officials of these other roads will be banded together to find means to put into the hands of the proper officers of the law information which will lead to detection and punishment. I submit that that class of men, the officials, are the very men who can most readily find a way to get the evidence that is necessary to conviction.

Mr. CORLISS. Now, is not this complaint with reference to differentials and rates the greatest possible element of discord and condemnation and irritation before the public to-day with reference to railroad traffic?

Mr. BIRD. I think, as I said in my first remarks to the committee, that there is no greater offense, none more widespread, and none more properly subject to condemnation than that one offense; that it is the chief cause of the greatest care, anxiety, and perplexity of railroad management.

The CHAIRMAN. Mr. Bird, here is a situation that is reprobated by everybody who has appeared before us. It is said to be reprobated by the railroad officials. The punishment for this offense is now on the man who commits the offense, the active agent in producing the condition. Here is a proposition to now transfer the punishment from

him to another body. That seems—that would seem—to the man who had not studied the question to be very singular. Here is a means of stopping it through the punishment of the man who is the actor.

Now, will you make some explanation to this committee—because you are now talking to the House of Representatives, and these statements will be discussed, and any proposition that we offer goes before the House—will you make some explanation as to why it should be necessary to change this responsibility or liability to punishment from the man upon whom it may now be inflicted, who is the servant and the agent of the party who under the proposed change would receive the punishment? I know that that is a subject, that is a proposition, that would strike the average mind later on as very singular.

If we should advocate that change recommended by the committee, we would like to be reenforced by the opinions of practical men as to why this should be, as to the necessity for it; why does not the master, who is to have this punishment inflicted upon him if the proposed change is made, why does not he do it now?

Mr. CORLISS. That was pretty well illustrated by the remarks of the commissioners as well as your preliminary statement, but we would like to hear from you fully on that.

Mr. BIRD. There are two reasons that present themselves to my mind in support of this suggestion. First, it appears to me that the purpose of the law is not revenge, but the prevention of crime; and if it can be shown that the method proposed is more likely to prevent crime, it is the part of wisdom to adopt that method.

The second is more of a personal matter. It does not seem right to punish the man who has no personal motive whatever for the offense and who would under no other circumstances, of his own free will, violate the law. I do not know a traffic man in all my acquaintance who does not infinitely prefer to obey the law. They have just as much pride in being self-respecting and law-abiding citizens as any other class of men, and in all other respects except this offense I believe them to be, as a class, honorable gentlemen, respected in their communities; and their pride is hurt, is lowered, when it comes to be apparent that their position is such that it practically forces them into this position. I do not know that I can add anything unless you see that I have omitted something.

I will add this: The purpose of the law is to prevent this crime. I go about my business in an ordinary way, and I find, after giving patient and constant attention to it, that in the course of a few months that traffic is drifting away from me in large bodies. The corporation that I represent naturally takes the ground that something is wrong and it should be righted. We find, in the course of our investigations, that some representative of some railroad, ignoring the law and its requirements in this respect, in order to secure large benefits, has beyond any possibility of doubt made some secret preferential contract with the parties who have taken their business away from us, who had given it to us. The business is gone, and a desperate condition of that kind requires desperate remedies. Chances are taken.

There are so many ways to violate the spirit of the law without committing a punishable offense, because it is impossible to prove it; the line of demarcation between that which may possibly be defensible and that which is clearly not defensible is so indistinctly drawn that you can see how easy it is to get into this, and under aggravating circum-

stances you drift and drift and drift until you are clearly in violation of the law.

Now, if my lifelong friend, with whom I have been associated in business for years, and whom I respect, and with whom I have most cordial personal associations, happens to be a representative of a rival road, it will require great pressure to lead me to try to inflict upon him the punishment which this law provides. I can not do it.

But if his company, the institution without a soul, authorizes or permits this offense, which diverts business from my company, the business over which I am in some sort a guardian, I have no compunction of conscience against bringing about the conditions which will punish that corporation. This is the general feeling which pervades the entire traffic community. I am sure this is the universal feeling among traffic men. The main thing in this connection is that we want something which will prevent the offense.

The CHAIRMAN. To illustrate, take the case of preferential rates given on beef products from Kansas City to Chicago. I have heard it said that roads bringing in cattle and hogs to Kansas City, and which had lines extending beyond there, once made an arrangement with the packers that they were to have out from there the same proportion of freight that they brought in, that there were three or four roads that did not extend beyond Kansas City, and did not bring any products or stock, and that after a time it was found that these roads were largely participating in the traffic eastward, and that thereupon they assumed that there were preferential rates, and all the other roads at once began to offer these inducements in order to secure their portion of the traffic.

Now, suppose that we were to make the change that is proposed, what probability is there that there could be that necessary volume of business secured that would break it up, under the change, rather than now, leaving aside this question of friendly regard? I do not suppose that any of the roads that felt themselves aggrieved had the proof. They knew that the other roads were getting some of their business, and they knew that it was in violation of at least an implied agreement or understanding; but did they have proof, could they have made the case if they wanted to, or might they have a greater measure of proof if we make this change?

Mr. BIRD. In the first place, Mr. Chairman, I do not believe that any such agreement or arrangement was ever made. It is a fact that a number of the lines extending between Chicago and Kansas City extend also farther west into the live stock producing country. It is also true that a stock argument between the agents of such a road and the packers is, "We contribute largely to the raw material, and we ought to have the business out." It was asserted openly, and I think under oath, by a representative of the Santa Fe Company in January, that his company contributed from 35 to 40 per cent of the live stock of Kansas City, and that it only obtained 2 or 3 per cent of the output, and that that was the reason it made a private contract with a certain house that led to all other companies making substantially similar contracts.

But I do not believe that there ever was such an arrangement as you refer to. It could not have existed without in some measure becoming public; certainly becoming known to the roads whose lines did not extend beyond the Missouri River. Nothing can be done by



what we call trans-Missouri roads—the roads lying beyond the Missouri River—in the way you speak of without making some concessions on live stock up to the packing points, and it is just as much a violation of law as any other act complained of.

Now, on the other hand, that which gives some shadow of support to the suggestions which have been made to you in that respect is this other condition. There are small packing houses at Cedar Rapids and other places similarly situated. They lie between the great initial points of the Missouri River and the Mississippi River, and there is some disadvantage on the rate on live stock in and out to the East.

After the long years of controversy and contest for that business, the packers at interior points have taken the ground—

Now, let us alone, and we will make a fair distribution of the business. You all bring in live stock to us here; all of you want to carry out the product; we will keep track of the business and divide the business in the same proportions as you bring in the live stock—

and that has been going on for years, and there is no contention or suspicion that the rates have been cut, because the rates from those packing points have been maintained; only the rate from Kansas City or Omaha being the maximum charge, that may give rise to some shadow of support to the other suggestion you make. The average traffic man is alive to all the possibilities of the situation, and is quick to see that some irregular means have been adopted, and I think that the very nature of that business is such as to enable them to find the sources of information which are required to enforce the law.

There can be many cases cited where the provision which has been suggested of transferring the penalty might not work out, but in the great, enormous number of cases there is no doubt in my mind that the transfer of the penalty would be most effective.

I know precisely what instructions I would receive from the management of the St. Paul company. There is no doubt whatever of the character of the instructions which all would receive.

The CHAIRMAN. Prior to the statements that were made by Mr. Morton in January last in reference to the action of the Santa Fe road, is it your opinion that any or all of their rivals had such knowledge of their transactions, their business, as that they could have furnished the proof that would have convicted the corporations of the offense of giving preferential rates—

Mr. BIRD. To this extent—

The CHAIRMAN (continuing). Prior to that time of his statement?

Mr. BIRD. Prior to that time. I will only say that I myself and many others might have been able to say to the Commission, "If you will examine such a man and compel him to testify you will get the facts." A great many things regarding the peculiar methods of handling this business are known to the traffic man which are not generally known to others. We could point out the men and give the reasons which convince us of the offense and the man most likely to know about it. That is so all over the country.

The CHAIRMAN. This particular method you suggest of calling this particular man, do you not suppose that the Commission have had that information all these years, that they knew of the persons who were the repositories of this knowledge?

Mr. BIRD. I doubt it.

Mr. RICHARDSON. There remains the question I am interested in,

that the chairman asked you and which I have not yet heard fully answered, because you said in answer to the chairman's question that no such arrangement as he outlined existed at Kansas City. But he went further in that question. I want to hear you on that other part of it, as to whether, if that arrangement had existed about the live stock, by what process and what means could that fact have been developed that that arrangement was made, and wherein and how does this present law give any additional means for finding that out? That is what I want to know.

Mr. BIRD. Each of the competitors of the lines adopting such practices has an army of men all over the field watching the drift of business and the causes for its changing its direction. One man has a bit of testimony here, and another a bit there, and so on all around the circle, no one item of which may amount to anything; but it becomes forcible when it is put together and collated and spread out before you until you have information which will surely lead to the designation of the person whom the commissioners may examine and from whom they may get the information.

Mr. CORLISS. They never succeed against an individual?

Mr. BIRD. I do not think they could against an individual.

Mr. CORLISS. They never have except where the individuals volunteered the information to the Commission.

Mr. BIRD. They never have in any case of which I am advised.

Mr. CORLISS. Therefore the present act requiring punishment for violations amounts to little or nothing. There has never been a punishment where there has been an imprisonment?

Mr. BIRD. No, sir; and I think very few convictions of any kind.

The CHAIRMAN. Excuse me for having interrupted you.

Mr. BIRD. The next question which I was asked to consider to-day, was presented by the Chairman. He said:

I would like to have you inform the committee, if you will, what are the elements of cost that are considered by you when you make a schedule of rates?

I have been engaged in the preparation of tariffs for many years, and I have never yet on any occasion been able to prepare a schedule of rates with any reference whatever to the cost or value of the service. In every case throughout my experience there has confronted me first: What are the competitive conditions that fix the rates for you arbitrarily? And in the 6,600 miles of railway which I represent I want to say that substantially there is no local traffic. There is not a station from or to which a rate is made that is not affected more or less directly with competition, so that you may not use your judgment as to what the service is actually worth or what it costs.

Is there anything further on this subject?

The CHAIRMAN. The purpose of that question was this: To-day I suppose there are a large number of gentlemen of large experience engaged in the fixing of rates; perhaps there may be hundreds of them.

Mr. BIRD. Thousands.

The CHAIRMAN. I do not know, but there must be a large number of men of responsibility in this matter; and they are largely high-priced men whose services bring the largest reward in the labor market. Now, the proposition is to change all that method and impose that duty upon five men, and the purpose I had in asking that question was to show that in each case of each road study, experience, knowledge,

was absolutely necessary to perform that public business of fixing a schedule of rates properly.

And I wanted to get some information as to whether it was possible to transfer that duty to five public officers, and expect that to be well done, and including in that duty the fixing of all the rates upon all of the systems of railway that we have in the United States, differing as the conditions would be in climate and a hundred other things that ought perhaps to bear upon the subject, and therefore I wanted to know what these elements of cost should be in order that each corporation should have a fair return upon the capital that it had invested in its enterprise.

Mr. BIRD. Mr. Chairman, what I have said is true, and it can be demonstrated.

It is also true that it is not within the bounds of human possibility for five, or more properly speaking, three commissioners (a majority of the board), to perform the duties of rate making. It is with the utmost difficulty that these matters are attended to by the various railway companies, each of whom keep a corps of well-trained men in this work. It is difficult for them to keep abreast of the times in the changes and modifications that are necessary. If you will multiply the number of experts so employed by a single company by the number of corporations in the country, it would be apparent that a small number of men can not perform such duties acceptably. We make rates and they are no sooner made (open and public) than unexpected difficulties arise, and the solution must be prompt, while new and unexpected conditions arise continually which must be taken into account. The service of the public demands reasonable promptness in all such cases, and it will be impossible for the Commission to do this work properly.

Nor is it possible, I think, for a body of that kind to do justice to the interests involved. In many cases where the Commission has investigated and instituted certain procedures, or given certain orders, which, upon the face of it, seem just and right, upon the attempt to put it in practical operation appears unjust; unjust to the communities as well as to the railroads, and more especially in some cases to the communities than to the railroads.

Mr. RICHARDSON. Is it not true that conditions and localities and surroundings all enter largely into the question of making rates? For instance, you take a railroad that had been projected through a sparsely developed country, and the intention of which was to develop that country, the trade or traffic is small, and should the same rate apply to that, properly and justly that would apply to a section of country which the railroad passes through that is highly developed?

Mr. BIRD. That has already been developed by the same line?

Mr. RICHARDSON. Yes.

Mr. BIRD. It is self-evident that an iron-clad rule or line of procedure can not apply universally in this country.

Mr. RICHARDSON. Do you not have to use common sense and business sense and liberality in the case of a road such as I have described in order to build up your business and to increase it, and to build up the country, and make your rates accordingly?

Mr. BIRD. Take a road which passes through the northern portion of Illinois and central and southern portions of Wisconsin which is highly developed in manufacturing industries. It is almost a second New

England. The business has been fostered and built up by judicious and liberal methods by the carriers.

But those lines extend away up in the northern peninsula of Michigan, and into Minnesota and central and south Dakota, where it is sparsely settled. It is to the interest of the people, as well as the railroads, that manufacturing and other industries be promoted, and they are promoted. You can see the growth of it. This promotion comes by departures from the published tariff rates—not secret preferential rates, for everybody is treated alike under similar conditions—but still those rates are departures from the ironclad rule. We haul machinery for all kinds of manufacturing establishments and industries, for mills and factories of every description, at reduced rates. We let a man have a plot of ground for a dollar a year upon a right of way to locate those industries upon, and so it goes.

MR. RICHARDSON. Would not a rate applicable to both lines of road be disastrous?

MR. BIRD. It would be disastrous to business. And in any other way it would be difficult to meet varying necessities arising in an undeveloped region, where reasonable and prompt action are conditions precedent to success.

MR. DAVIS. Do you understand from this bill that the Commission has a right to fix a line of rates, ironclad for all roads and all sections alike, and that they would be compelled to do it under this bill?

MR. BIRD. I do not know that, literally speaking, that would be the course, but I know this: That in fixing rates the Commission must pursue a well-defined policy, and that they themselves, as well as carriers, are bound to comply with the spirit and purpose of the act; that they would have no right or authority to deflect from the law in the performance of their duties, and I know that they must be consistent from one case to another, and so on, and in a short time it would develop that the Commission was not competent—I speak respectfully of the Commission, but it would appear that they are not competent—to discharge the duties this bill seeks to lay upon them.

The railway companies do depart from the published tariffs. I assume that is entirely right, and they should do so, but they are always doing it at their own peril, and subject to criticism, and liable to be dealt with if they make a rate that is indefensible and unjust in itself and works injury to anybody else. They must carry all that risk, and they do carry it every day in building up the interests on their lines and developing the country through which those lines are operated.

The greatest work that has been done in the United States is the development that has followed the building of railroads through the sparsely settled portions of the country. No other agency has done so much, and it seems to me that the proposition is that these agents shall cease this work to a large degree, not suddenly, not abruptly, but certainly.

MR. WANGER. After a tariff of rates has been prepared for your company, what officer is the final arbiter of the rates, where there is conference about it?

MR. BIRD. There is no fixed rule in that respect which applies to all railways. Sometimes the duty is assigned to one man and sometimes another. In the St. Paul company I am the final arbiter unless there is an emergency, when I consult the president, the chief executive officer of the company; but in other cases it comes to me. With

some companies the general freight agent is the highest traffic agent of the railroad. And so it goes. There is no set rule. It depends upon the organization of the company.

Mr. WANGER. But there is generally some one official in each company who is the final arbiter.

Mr. BIRD. Yes, sir; sometimes the general superintendent, and sometimes the general manager, and sometimes the general freight agent or the freight traffic manager or the general traffic manager, and sometimes the vice-president or the president.

The CHAIRMAN. About how frequently in your company is there a complete readjustment of an entire schedule of rates? I mean not necessarily in the way of publication, but in the way of consideration.

Mr. BIRD. It is hard to answer that question.

The CHAIRMAN. Is it a matter of frequent occurrence?

Mr. BIRD. You take, for example, a schedule of rates between Chicago and Kansas City; that may be termed a complete schedule.

The CHAIRMAN. When I used the term "schedule," I meant one of these immense printed sheets that you publish from time to time. I wanted to get some idea of the labor involved in that matter.

Mr. BIRD. The revision of rates is constant and the publication of new tariffs or amendments to tariffs is going on every day. The printing bills for tariffs alone are an enormous expense. The change of one rate or one class of articles or one article in one class often involves a revision of rates upon a great many, and it is almost impossible to answer that question with precision; but, if you please, let me answer this question in a different form.

I have some other data here, which I referred to yesterday, which were taken from the archives of the Interstate Commerce Commission, and, as I said before, that average is there shown to be about 15½ instances a day, including Sundays, so that we have 16 or 17 changes of rates every working day, and the change of rate from Chicago to Kansas City means the change to South Omaha, Omaha, Council Bluffs, and many other points, and to St. Paul, and to Minneapolis, probably. Let me make another statement which may seem strange to you, but which has been proved on many occasions. A change of the rate on any article or class of articles from Hannibal, Mo., to St. Joseph, Mo., a distance of 206 miles, involves changes of rates correspondingly from St. Louis to Omaha, South Omaha, Atchison, Leavenworth, Plattsmouth, St. Joseph, and Kansas City. The change between Hannibal and St. Joseph involves all of those changes, and frequently between Chicago, Milwaukee, St. Paul, and Minneapolis.

The CHAIRMAN. Are those changes necessary, or simply arbitrary?

Mr. BIRD. Those just named are necessary, but I think many other changes have been made that were not necessary. They are made generally by stress of competition, and the number of changes to be made, and that are now being made since the going into effect of these injunctions, is increasing with a great velocity. As I undertook to say, the benefit which the public receives in this way is increased in great proportion, because if a rate is reduced from St. Louis to St. Paul, and is published as they are now being published in the absence of secret preferential rates, they are the maximum rates to and from intermediate points. The rates are so low and they are graded in such a manner that the reduction of a few cents on a long haul covers a great

many intermediate stations. And so the change of rates is going on continually.

A great abuse, from a railway standpoint, is doubtless going on as a result of these injunctions. It is now no longer safe to concede to anyone a secret rate not covered by a tariff. And yet the weaker lines say, "We must have business. There is one thing worse than low rates, and that is no business. We have empty cars here, and we are doing nothing." And an agent will go to A or to B who have, say, 2,000 cars of freight to be moved, and will say, "You have this freight to be moved; I want it. What rate will take it?" And the man says, "If you will give me such a rate, I will take it." What is to hinder the railroad company from saying, "I will do it, and in ten or fifteen days I will move your product?" And then he publishes that rate, and that makes it legal.

These are the forces that are now working to force down rates, a force which has never before been developed; and that is in the face of the statement repeated here that competition has ceased. These are not made-up cases. They are taken from the archives of the Commission.

There was one other question asked of me by the chairman. He said:

I would like to ask you if there is a difference on the cost of transportation produced by climatic changes; for instance, does it cost more in a northern climate to handle freight in the winter season than in the summer, in the warm weather?

Assuredly. You, Mr. Chairman, are familiar with the geography of the St. Paul line and all those great lines in the Northwest, and it has frequently occurred that between the months of November and May the cost of snow shoveling on some of those lines has exceeded the gross revenue.

I was asked by the Iowa commission, some years ago, to name a single element that in any way determined the cost of transportation. They challenged our judgment and our right to make rates, and asked me to name a single item that affected the cost of transportation, and I told them I would name one, and that was the direction and velocity of the wind; and it was not farfetched, for you know that a train running from Dubuque to Sioux City, running against a diagonal wind, a strong head wind, the engine may haul 15 or 16 loads at a low rate of speed, whereas, in good weather it may haul 25 loads. And I say that is an element of the cost. And I say, as to this provision which gives the Commission power to fix rates for the future, no intelligence, no power has yet been developed that can with any degree of certainty tell what it is going to cost in the future. It is possible by the law of averages to say what it has cost in the past, if you have the statistics, but to say what it will cost in the future in any given case is out of the question and beyond the range of the human intellect.

Mr. COOMBS. Has the geography anything to do with the relative cost?

Mr. BIRD. How is that?

Mr. COOMBS. The geography; you take the Santa Fe from California, and it runs through a level country, comparatively, while on the other hand the Southern Pacific commences to climb the Sierra Nevada Mountains, and, connecting with the Union Pacific, it has to climb over the Rockies.

Mr. BIRD. Geography certainly has a great deal to do with the

matter. Millions of dollars have been spent in the last few years to reduce grades and curves, and it is most evident that the geography is therefore to be taken into consideration. This class of expenditures are continued and are increasing. The Central Pacific and the Union Pacific from San Francisco are at a great disadvantage in certain seasons of the year, in stress of weather, and it is apparent that it is far more expensive to do business by the way of Ogden and Salt Lake than by way of the Santa Fe road.

Mr. COOMBS. You take the road across the Sierra Nevadas and you always have to have a double-capacity engine in the winter time on account of the snow and the shoveling of snow and repairing of sheds. Can you give an approximate statement of the relative cost between the two routes—the Santa Fe and the Union Pacific?

Mr. BIRD. I could not go into that. I am not for that line of argument, and I think none but an operating expert could give you such an estimate. But every practical man knows this to be true, that the Santa Fe in the winter time or in the snow season can do business much more cheaply than the Omaha, Ogden and Central Pacific lines. That is patent. The road in the spring season is sometimes blocked by snow, and all the unusual expense is going on, but the revenue has ceased; and the damages incident to detention and personal loss swell the expenses.

If the cost of the service enters into the making of a rate, it must be duly considered, and it takes a great deal of ingenuity, intelligence, and experience to determine what bearing the cost can have on the tariff. If anyone is clothed with power to make rates, that power must be limited to making a reasonable maximum rate, and they must not make a rate which is unreasonable or which is based on temporary competitive conditions, because the bill provides that their rates must continue two years, long after the necessity for minimum or competitive rates has ceased. In order to fix reasonable maximum rates they must be practical and experienced, and I find no such practice and no such opportunity for experience on the part of the gentlemen to whom it is proposed to delegate this power.

The CHAIRMAN. Mr. Bird, suppose that twenty-five loads on a dry rail in the summer time is the proper train for a given engine, in summer, warm weather.

Mr. BIRD. Yes, sir.

The CHAIRMAN (continuing). Where the lubricators are lubricating, and the oils are all in their best condition, and the packing is all in its best state, what would be the capacity of that engine; how many cars would they have to drop out in the winter time on a frosty rail, when the boxes are all frozen, as they would be in the climate of northern Iowa; how much less capacity would that engine have under those conditions than under the former?

Mr. BIRD. In extreme cases, sir, 50 per cent; possibly more. Frequently it would be 15, 20, 25, or 30 per cent, according to the degree of temperature, according to the direction of the wind, and according to the degree of frost upon the rail, and according to all these conditions which affect the moving power of the locomotive. The conditions not only affect the weight or resistance of the train, but affect the power of the engine as well.

The CHAIRMAN. It affects its steaming power?

Mr. BIRD. Yes, sir; and its wheels slip; the traction is incomplete.

Is there anything further on that point?

The CHAIRMAN. Nothing that suggests itself to me.

Mr. BIRD. There is another question. The chairman asked this question:

As I understand the Commission, they think they should have the power to fix the rates for the entire country, and they have stated that under a given condition, if this act should pass, it would be necessary, or might be necessary, for them to fix all the rates upon an entire system of railway. Now, is there any middle course that might be adopted there?

That question is taken from the stenographic report of the chairman's remarks yesterday. I do not think there is a middle course. I do not believe it possible, proper, or just to give to anybody the power over rates at all unless they have supreme control. I believe that if they are charged with the duty of fixing rates on a given article that duty necessarily implies that the changes they may make in that case must be met by them. I do not see how it can be separated from the whole power. Practically it can not be separated. If the question arises, if the complaint is made that the rate on soap between Chicago and Omaha is excessive, and they may determine that it is in some respects excessive and require a modification for two years at least, that may be sufficient.

But here is an opportunity and here is an invitation for the shipper of every other article in the class in which soap is included to say "You have created new conditions, and soap is not paying its proper share of the transportation charge on fourth-class goods. Other articles are paying their share, and we want this equalized. I want to ship my candles," one will say. And so a special rate is given, and so it goes on, ad infinitum. I do not see how the duty could be performed with any satisfaction to the public if it is confined to a single article at a time, and even if it is, the door is open to complaint and anyone may well insist upon a revision of the entire tariff.

I do not think that the Federal Government can properly control interstate traffic in any particular unless it can control it all, and the control lies in the rate-making power.

There is no other connected question with the subject of any considerable importance, and it is just as reasonable to say that Congress shall control the rate on soap and on nothing else as it is to transmit its power to the Commission in the same manner.

Mr. RICHARDSON. That means, does it not, that the Government can never take the control of these matters unless there is Government ownership of the roads? It reduces it to that.

Mr. BIRD. I am hardly competent to go into that question.

Mr. RICHARDSON. It ultimately leads to that argument?

Mr. BIRD. Perhaps it does, but I am only trying to say that if the Commission is to have this power conferred upon it it has to be conferred by the Government itself, and if the Government undertakes by more direct means to control interstate commerce, it can not do it effectively unless it controls it all, and it can not wisely confer upon a substitute body the power to control a part of it unless that power applies to it all, and the very act of fixing the rate on this or that article makes it immediately necessary to regulate it upon something else, and "something else" covers the whole range.

Now, aside from the complaint in regard to the abuses about which there is no controversy, viz, secret preferences. The burden of com-



plaint, the drift of the arguments in support of this measure is that there are open tariff discriminations between communities; that the rates between Chicago and New York, for instance, are disproportionately high when compared with the rates between Chicago and Philadelphia or Chicago and Baltimore. It is alleged by the proponents of this measure that discriminations of this character is the justification for pending measures. How can they regulate that unless they control every class, every article and rate in all tariffs everywhere? And immediately there comes before this Commission, under this measure, the necessity and obligation of taking in the entire traffic of the country.

There is only one question remaining, Mr. Chairman, which was proposed by you yesterday. You said:

Then I would like you to give your views as to what the remedy should be where there is an excessive charge persisted in by a carrier.

Mr. Chairman, in my opinion, if measures are adopted which substantially do away with the great offense of secret rates a new condition will be created, thoroughly new, a revolution, so far as that is concerned. Public opinion has been in some wise, perhaps, affected, limited, or restricted, more or less, by the fact that a number of large shippers have been able to get benefits which their neighbors have not had, and those men very largely mold public opinion. Wipe that out. I believe it can be done effectually; and then when it appears that a rate is extravagant or extortionate or unreasonable, and has been so pronounced, public opinion will be much more effective.

But I do not rely upon that as a remedy, but only as one of the things to be taken into consideration. I do not see why proper and prompt measures may not be obtained. I do not see what is to prevent injunctions or any other processes which are open to the Commission at this time, processes which bring about a speedy determination of the reasonableness of a rate. It does not follow that because somebody complains a rate is unreasonable. Because somebody persistently insists upon it and continually follows the Commission with complaints, it does not follow that that rate is unreasonable. It may be a vital point for the carrier, and the carrier should be at least assured of the protection which the law affords to other people in the protection of their property, and in this case it seems to me that the process is swift enough. But, as I said before, I feel incompetent to discuss these questions from a legal point of view, and a gentleman will follow me at the pleasure of this committee who is better able to discuss that than I am.

Mr. Chairman, I have been interested, as the defendant, or the representative of the defendant, in a very large number of cases. I can not remember a single one which has come from the producer, from the owner of the property. In every case which I call to mind, and I am willing to say now that the majority of the complaints have come from the middleman, the man who does not pay the freight. I do not question the right of that class of men to appear before the Commission and make their complaints. They have a legal right to do so, but it is a thing which I think this committee, representing Congress, can well afford to take into consideration. Their quarrels are as distinctly quarrels for supremacy over their competitors as ever was a quarrel between railroads for supremacy. And the Commission is,

and always will be, used as a forlorn hope to beat the other class of men and the other community. And perhaps it is right.

But it is a fact that the man who pays the freight seldom complains. The very thing that one community complains of is the very thing that pleases the producer, because he can ship somewhere else at a higher rate of profit, and because there is always in such cases an element of competition which adds to the value of his property. And in most of the cases, if these complaints were sustained, it would in a large measure reduce competition and deprive the producer of a profit which he had previously had.

Mr. DAVIS. Somebody before us, I do not know who it was, a week or so ago, took the position that the producer was not the man who pays the freight anyway, and I tried to get him to go to the last analysis of that and admit that the producer paid the freight, but he never did. I understand your position to be that——

Mr. BIRD. If the tariffs on wheat from the wheat belt to Chicago, Milwaukee, and Duluth is maintained, if there are no secret preferences to the middleman, then the price of wheat at the wheat fields, at the farmer's door, is the price of the wheat at Duluth, and Minneapolis, and New York, and Liverpool, whatever place it may be, less the freight and reasonable commissions.

Mr. DAVIS. That is exactly my idea. This man would not admit that.

Mr. BIRD. You can not get away from that. That is so plain that the man who runs may read it.

Mr. Chairman, I could occupy your time further if it was proper, but I will not trespass upon your time unless you or members of the committee wish to ask me any questions.

I thank you very sincerely for the consideration which has been given to me.

The CHAIRMAN. We will resume these hearings on Tuesday next at half past 10.

(Thereupon, at 11.40 a. m., the committee went into executive session, at the conclusion of which it adjourned until Tuesday, May 6, 1902, at 10.30 o'clock a. m.)

---

INTERSTATE COMMERCE COMMISSION,  
*Tuesday, May 6, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The committee will be in order. Mr. Blythe, if you are ready to proceed, the committee will hear you.

**STATEMENT OF MR. J. W. BLYTHE.**

Mr. BLYTHE. Mr. Chairman and gentlemen of the committee, I have been asked by representatives of a number of the railroads in the West and South to present their views, which are my own as well, upon some of the general features of the legislation pending before this committee, and especially upon the general features of the Corliss bill. It is my wish to follow in what I shall have to say the will and suggestions

of the committee, or members of it, and if I should wander away from the subjects that seem to them most pertinent, I shall be very glad to be recalled.

The Corliss bill has in it certain definite grants of power as to the control of rates, which is the most important feature of the bill, and which, if the committee please, I will reserve for a few moments and discuss very briefly some of the remedial features of the bill, simply to meet the inquiry of the Commission as to what the views of the railroads in respect to those are.

I have not had the privilege of hearing the testimony before the committee on the part of the proponents of this legislation, but I have read with care the most of it, and especially the suggestions made by the members of the Interstate Commerce Commission. The complaint seems to be directed, first, to preferential rates, the payment of secret rebates, discriminations in favor of individuals or of communities, and, finally, and in a most important sense, was alleged the want of power in the Commission to give effect to its judgments, and in respect of all of these there seems to be a definite claim that the power to fix rates is necessary, while, incidentally, it is claimed that certain other powers should be given.

The most important remedial feature of this act is as to the method in which the proof should be taken and the effect to be given to the award of the Commission. The bill provides that the award of the Commission, the finding or judgment of the Commissioners, shall be conclusive unless it shall be suspended by order of a court upon an appeal, "where it clearly appears," I believe is the language, that the order was erroneous. The further provision is that the testimony shall all be taken by the Commission; that any court to which the case shall be afterwards removed, or "appealed," as the language of the act runs, shall proceed only upon the evidence taken by the Commission, and if that be found to be insufficient or in any way defective, that it shall be remedied by reference back to the Commission for the purpose of taking further testimony.

I think, Mr. Chairman, that I may say that the whole history of our Government may be challenged for any such limitation upon the power of the Federal judiciary. I believe it to be anomalous and without parallel, and the only parallel that is cited is cited, I believe, by Mr. Bacon when he says that it is analogous to the finding of the board of appraisers in cases of imports into this country. But, if the committee please, there is this important distinction to be taken there. The appraisers sit as an arm of the Government in aid of its taxing power, the power where the intervention of the judiciary is simply a waiver by the Government of its prerogative, because the Government could and did, in the absence of constitutions and before the days of constitutions, put its hand into every man's coffer and take out what it wanted for purposes of government without any special judicial determination as to whether that act violated any of his rights.

And even in this case the person upon whom the tax is levied or the property upon which the tax is levied, to be more accurate, has no appeal. There is no judicial determination as to the propriety of the right to levy a tax or as to the amount of the tax which is collected. That rests entirely in the will of this Congress; it rests always in the will of the Government, and is an exercise of high prerogative. No other case has been cited at this hearing, no other analogy, no other

parallel, to this legislation. But a year or two ago the Interstate Commerce Commission, speaking for itself, suggested that this method of taking testimony was analogous to the taking of testimony by a special master, the taking of testimony in all courts of equity by masters or commissioners appointed for that purpose.

But here is an important distinction to be taken between a master in chancery or a notary public sitting as a master, or any person to whom the power of the court is given in aid of its power to take testimony; no matter how it is done, done by agreement of parties, under a statute or rule of court, no matter how it is done, the court has control of that officer; the officer is an officer of the court; he is an arm of the court, subject to its direction, and no person can be compelled to testify before a master or a special commissioner if he chooses to invoke his constitutional right to ask that he be taken before the court and there given an opportunity to be heard upon the question whether the testimony is material, relevant, and whether the compulsion to testify under the circumstances is an invasion of his personal and constitutional rights. No such provision is in this act; never has been any attempt in this act to preserve the constitutional rights of the witnesses; nor in any other legislation which has been proposed upon this subject.

Now, there is another very important reason why the Commission itself is absolutely incompetent, why it is disqualified, and ought to be disqualified from acting as a commissioner to take testimony in a case of this character, and what I have to say, Mr. Chairman and gentlemen of the committee, upon this subject I say with very great diffidence, for all the gentlemen composing the Interstate Commerce Commission are men for whom I entertain the highest regard, and with whom I am on the most friendly terms and with whom I have companionable and pleasant personal relations. I do not wish to assail their purposes or their motives in any way. I wish to assail only the organization, the functional structure of the body which they compose, which renders them incompetent to enter upon an investigation of this sort. The Commission is a partisan body; a body framed to be partisan. The interstate-commerce law made it a partisan body.

Commissioner Prouty testified before this committee last week or week before that it was a partisan body. Every commission of this character that ever has been erected under any law of the United States, or under any law of any of the States, has been recognized to be so. As Governor Larrabee said, in a communication directed to the legislature, apropos of the Iowa State commission, "the commission is a committee of the people. The railroads can be trusted to take care of themselves." That has been the fundamental idea of every commission ever erected, and it appears in the original act to regulate commerce—the Cullom bill.

There is no provision in that bill anywhere that the Commission shall proceed as a judicial body, or that it is charged with the duty of preserving and safeguarding the interests of the railroads, but the whole spirit and intent of the act to regulate commerce was that the Commission should represent the people, that everything they did should be done at the expense of the Government for the complainant as against the railroads, and that in all the functions which that Commission was called upon to exercise it was to be jealous of the rights of the people,

the rights of the shippers, to remedy and prevent the abuses that the act contemplated.

Mr. Chairman, can a partisan body, can a body that is organized for the purpose of looking after the shipper and jealously caring for and looking after the interests of one party to a litigation, that is itself generally a party to the cause, be a proper body to take all the evidence and make up the record upon which the rights of the other party shall be heard and determined by the judicial branch of the Government?

And there is another reason. The Interstate Commerce Commission is an extra-constitutional body. I do not say it is unconstitutional, I do not assail the power of Congress to pass this act, but I say that it is an extra-constitutional body. There is no word in the act which makes this Commission the arm of any one of the constitutionally recognized departments of the Government.

It has powers which the Commission themselves say are partly legislative, partly administrative, and partly judicial—quasi-legislative, quasi-judicial—ringing the changes on those terms. The act does not make this Commission or Bureau responsible to any department of the Government. The act provides not that they shall report, except to Congress. They shall report to Congress certain things, what they do they shall give publicity, and all that, and they are to report to Congress the things which they recommend shall be done in the way of further legislation or further remedial action, to give effect to the purposes of the law. I do not think it would be an extravagant thing if I should say that it could not be successfully challenged that no member of the House has ever read the reports of the Commission. I doubt very much if any member of this committee has ever carefully scrutinized the reports of the Commission to see what they have done in response to mandates of this character.

The result of this, if what I have said is true, is that to give this power to the Commission to take evidence is an unconstitutional exercise of the legislative power—

Mr. COOMBS. What?

Mr. BLYTHE. It is an unconstitutional exercise of the legislative power. That is to say, Congress has no power to confer upon the Commission the right to take evidence in a case which is one, recognized as one, for judicial determination.

Mr. COOMBS. You are speaking about the judicial features?

Mr. BLYTHE. I am speaking only about this judicial feature: That the judiciary shall be limited in any case properly brought to its cognizance by testimony taken in any extraconstitutional way, taken outside of the rules and limitations and precedents of the law and the Constitution is, it seems to me, a wholly unconstitutional thing.

I do not think I need to enlarge upon that, because it follows, I think, from what I have already said about the structure of the Commission itself. I think it follows, too, that if an order of the Commission is made, and if the railroad companies think that their rights are invaded to the extent that it becomes necessary for them to appeal to the courts, that in order to avoid very grave injustice and oppression it is necessary that the appeal to the courts should in some way supersede the order until the courts may themselves pass upon the propriety of it. Any other rule than that, of course, as we have found in some cases, is to take away practically all the advantage of the

constitutional right to go into the courts to have your controversy determined. I do not, of course, mean to say that the appeal of itself should supersede the order. I do not think that is necessary, nor do I think it, on the whole, expedient.

But I do not think that the court should be vested with the same discretion that a court of equity will exercise in every other class of cases which come before it for determination, and in its discretion supersede any order which may tend to work injustice if not superseded, and keep the rights of both the parties litigants in abeyance until the courts may act upon it. Therefore I think that this bill should be modified so that the appeal to the court taken within a reasonable time—and by the way I think that twenty days is entirely too short a time and should be extended—the order should be modified so that the appeal will of itself suspend the writ, as this act provides for a few days, after that the court may suspend the writ, or permit it to go into effect at its discretion upon a review of the case as it is presented by the parties.

Of course, what I have said in that connection will affect also the provisions on page 6 of this bill, that an appeal to the Supreme Court shall not operate to stay or supersede the order of the circuit court. That is a matter that should rest in the discretion of the court. It is not uncommon, it is almost, I think, the invariable rule, that the courts may exercise their discretion to grant a supersedeas in all cases of appeal, and that power, I think, should be preserved in this bill.

Mr. RICHARDSON. Right there, on page 6—

Mr. BLYTHE. Yes, sir.

Mr. RICHARDSON (reading):

The filing of a petition to review an order shall of itself suspend the effect of such order for thirty days, and the court before which the same is pending may also, if upon an inspection of the record it plainly appears that the order proceeds upon some error of law, or is unjust and unreasonable upon the facts, and not otherwise, suspend the operation of the order during the pendency of the proceedings in review, or until further order of the court.

Mr. BLYTHE. Now, Mr. Richardson, if you will permit me, the only thing that I object to there is the phrase "it plainly appears." Mr. Knapp, if I am correctly informed, acknowledges that that is too stringent and might be construed as only requiring the court to suspend the order in a case where some very manifest injustice is to be done.

Mr. RICHARDSON. Then that language would only convey the right and power to suspend any order of the Commission until the further order of the court?

Mr. BLYTHE. Yes, sir.

Mr. RICHARDSON. That is, that the full effect of the appeal should be granted to the defendant?

Mr. BLYTHE. Yes; the rule that applies in every other equity case. That is the only thing the railroads ask; that the rules that govern other business shall govern theirs. If we can not live under the law, we can not live at all.

Mr. COOMBS. You think that anything else would not be due process of law?

Mr. BLYTHE. I think not. While perhaps it will be going too far to say that such a provision as this would be clearly unconstitutional, I say that it is clearly unjust.

Mr. COOMBS. Here is the proposition: Due process of law, of course, is a very common term, but is it necessarily an inhibition on the legislature of providing for a procedure in one case where general procedure might perhaps be applied to other cases; that is, special procedure of court, mind you——

Mr. BLYTHE. I should say no, so far as it affects remedies and procedure only and not the substantial rights of the parties, but such legislation must not curtail constitutional safeguards.

Mr. COOMBS. That is always dependent upon the question of whether it does curtail constitutional safeguards.

Mr. BLYTHE. Always.

Mr. COOMBS. Now, this is only a change of method of procedure; it is not anything more.

Mr. BLYTHE. Is it not something more in the attempt to give to the Commission a restraint and a limitation upon the courts in respect to the making up of the evidence?

Mr. COOMBS. Pending an appeal?

Mr. BLYTHE. No; I am talking about the other question of taking evidence. So far as this matter of the suspension of the writ is concerned, I say leave it entirely to the courts; and I do not say that it would be unconstitutional, Mr. Coombs, for the legislature to take away that right. It would be unjust and oppressive, but I do not say it would be unconstitutional. I do not know whether it would or not.

Mr. RICHARDSON. What is the trouble, if the Interstate Commerce Commission should fix a rate; it seems to me that their complaint is that they can not enforce their orders. What is the trouble if they can not fix a rate; as to the remedy of injunction, why would they not be protected in that?

Mr. BLYTHE. I think they are abundantly protected in that in the act to regulate commerce as it stands. I think they have all the power that Congress ever could give them.

I was just about to proceed with the discussion as to the giving to the courts more clearly the remedy by injunction in cases brought before them by the Commission, where that remedy is sought. It seems to me that resorting to the remedy by injunction, the interests of the shipping public as well as the railroads would be amply protected. It strikes me that way. I can only say again that if a railroad can not live under the law it can not live at all. We have got to live under the law. That is all we want, but we want the same law that everybody else has. The Chicago, Burlington and Quincy Railroad has 40,000 employees. They have relatives and friends, and our relations with the whole community are intermingled. We only want to live under the same laws, rules, and customs that everybody else that we are associated with has to live under, and if we can not live under that law we can not live at all. Have I met your inquiry?

Mr. RICHARDSON. Yes, sir.

Mr. BLYTHE. As to the remedy by injunction I wish to say only this: I believe in the remedy by injunction. I believe in the arm of the Federal courts. I believe in the rule that courts of equity should expand and enlarge their jurisdiction. I believe that the greatest safeguard of republican institutions lies through the equitable courts of the Federal and of the State governments. Therefore I should like to see any enlargement of the Federal jurisdiction, especially of the equitable courts, that human ingenuity can devise that is calculated

to meet any of the evils of our civilization. And I believe that the act to regulate commerce as it stands to-day confers that jurisdiction upon the Federal courts in as large and as plenary a way as this bill does, although not in so distinct terms, and the only reason I should object to the enactment of the provisions of this bill into law at this time grows out of certain circumstances obtaining in a way to which I wish to call the attention of the committee briefly.

The Government of the United States, I believe, at the instance of the Interstate Commerce Commission, and more directly at the instance of the President of the United States, has caused a number of suits to be brought restraining the railroad companies of the West and the South from paying rebates or further discriminating in any way between shippers and localities. It has been doubted whether the Federal courts have that jurisdiction. That has been questioned. I myself believe that the power is complete. The Government believes so, but it is a mooted question, and it will be raised before the courts in which those suits are pending.

My own judgment is that it is very desirable that the jurisdiction of the courts in those cases should be sustained, however the cases shall be finally decided. But with that question open, that question mooted, if the Congress should now legislate conferring that power, is there not danger that the courts would say:

Congress has itself construed its own act, in the absence of any judicial determination, and that must be taken into the account, and in view of that we will hold that the Congress did not intend by the act to confer this equitable jurisdiction upon the courts.

In that case the cases now pending would fail and the parties would be put back where they were before the suits were brought.

Mr. COOMBS. Do you think the court might take that as a rule of construction?

Mr. BLYTHE. I think so. If that objection is a valid one there is no doubt about that.

I think, Senator Faulkner, that that is all I have to say on that point. Is there anything more?

Senator FAULKNER. I believe not.

Mr. BLYTHE. There is the further question as to the penal provisions of this act, as to who would be liable in case of criminal violations of the law. The law now provides that the corporation shall be liable, that any agent, officer, etc., of the corporation shall be liable, and it provides in certain cases that the shipper shall be liable. But the provisions in respect to the liability of shippers are of such a character that a discrimination must be shown before any shipper shall be criminally liable.

The shipper is also criminally liable if by false weighing, and all that sort of thing, or any device, he fraudulently gets a lower rate. He is also liable if he pays a lower rate than somebody else is contemporaneously paying, by way of rebates; but he is not liable if he accepts rebates which are open to everybody or paid contemporaneously to everybody else.

I have nothing to say in addition to the arguments which have been advanced here by the Interstate Commerce Commissioners and by Mr. Bird as to the reasons why the present liability of the agent of the corporation should be removed.



I believe that it is a clear case that the ends of justice will be furthered by that, for the reasons they have given. The agent of a corporation is a mere servant, mere agent, and it may be one agent of the corporation to-day and another agent of the same corporation to-morrow, and half a dozen men representing some corporation to-day, engaged in a case of this sort in the carrying out of the instructions of superior officers representing the corporation or possibly the corporation itself. For fifteen years the attempt has been made to get the evidence of violations of the law of this character that would result in the punishment of individuals who are employed by the corporations, and those efforts have signally failed, I believe, in every case. There have been one or two cases, only one or two, and in those cases the facts were very unusual. I believe that if punishment were restricted to the corporation itself it would be found very much more effective.

As to whether or not the shipper should be liable, I am clearly myself of the opinion that the shipper should be liable equally with the corporation. Of course, the same reasons that apply in the case of the railroad would apply to the shippers, where the person technically receiving the rebate is a mere servant and a mere intermediate. The punishment ought to fall upon the real beneficiary, whether as individual or corporation, and I believe that it would not in any way tend to make convictions more difficult to make the shipper liable.

Mr. RICHARDSON. If the larger includes the less—if you put the punishment upon the corporation—would you not be stopping the opportunity of the shipper to avail himself of the rebate? Why not put it upon the corporation and exempt the shipper?

Mr. BLYTHE. The reason for that is this: The giving of rebates to shippers is in every case of which I have ever had any knowledge a case of sandbagging.

Mr. ADAMSON. Don't you think the attempt should be punishable even if he does not succeed; if he just solicits the rate should he not be punished?

Mr. BLYTHE. I think I would hardly go as far as that. If you applied that to the ordinary rules of life there are many of us who would find ourselves in a very disagreeable situation. I do not think you ought to limit ingenuity in that way.

Mr. ADAMSON. I do not call it ingenuity to violate a public law. That is rascality.

Mr. RICHARDSON. Is not your position this, that you are prohibiting the exercise of the natural disposition on the part of men to go and solicit the very best terms that they can. You are making it a crime for them to do that. A man goes to an agent and wants his goods shipped, and he wants them shipped on the very best terms, and he goes innocently and goes without knowing the terms prescribed by the railroad. The agent may agree with him. He may say, "I will send your goods at so and so on the regular published tariff rate," and yet afterwards they will turn him over a rebate. Now, ought that man be punished criminally?

Mr. BLYTHE. If he does it knowingly.

Mr. RICHARDSON. Yes; he is supposed to know what the law is.

Mr. BLYTHE. Suppose he actually knows?

Mr. RICHARDSON. He does not know until the rebate is handed back to him.

Mr. BLYTHE. I think you must have the scienter.

Mr. ADAMSON. All those questions are governed by the laws restricting procedure, and it seems to me if you make anything a crime, the attempt to do it ought to be a crime, if it fails also.

Mr. BLYTHE. Well, I think, if you please, that is going a long way. There are some crimes where it is undoubtedly true. But who ever heard of a man being punished for murder for the mere attempt made. He is punished for the crime of attempting it.

Mr. ADAMSON. With intent to murder. Assault with intent to murder.

Mr. BLYTHE. Assault; yes, sir. He is punished for the assault.

Mr. ADAMSON. That is an attempt.

Mr. BLYTHE. But the attempt to murder is never punished as a murder.

Mr. ADAMSON. It is just a different name for it. Attempt with intent to murder means an attempt to murder.

Mr. BLYTHE. There must be some overt physical violation of the rights of the victim before any man can be punished.

Suppose I go to your hotel with the intention of attempting to murder you, but before I get there something diverts me and I go back.

Mr. ADAMSON. All that has been provided for for ages.

Mr. BLYTHE. Yes; that is not a crime.

Mr. RICHARDSON. Don't you think if you make the penalty large enough and impose it upon the corporation it would stop rebates? The attempt would be prevented then.

Mr. BLYTHE. I think that in that view you leave out of sight—I think there is much to be said for that side, but I think you leave out of sight this consideration: Suppose that Mr. Armour in the old days—let us suppose a case which can not now happen, because all the men are dead—suppose that Armour, who, in the old days was the head of the largest packing company in the world, and suppose he had gone to Alexander Mitchell, president of the Milwaukee and St. Paul Railroad. Those two men were warm personal business friends, in a great many enterprises together, and confident of each other.

Suppose that, as I say, Armour had gone to Mitchell and said to him:

Of course, your company is liable here under great penalties if it should pay me a rebate, but you have got to do it. If you don't do it I am going to give all my products to somebody else.

Suppose that Mitchell had given it to him under the stress of that threat. Now, there is a thing that you can not prevent. I do not say you could reach it under any law, that particular case, but I say that is the way rebates are paid to-day.

Mr. ADAMSON. The fact that there are some extreme cases that you do not catch ought not to deter society from making salutary laws?

Mr. BLYTHE. I do not speak of this as a reason for not making the law. I say it is a reason why you should punish the shipper. I say it is the crime of the shipper. I say it results invariably from the pressure of the shipper. There never has been an exception, in all my knowledge, where the railroad company has gone to the shipper and tried to seduce him into accepting a rebate.

Mr. ADAMSON. I think you could clear them of that very easily.

Mr. BLYTHE. It is not the railroad who is guilty. It is the shipper who is guilty in all this rebate business.

Mr. RICHARDSON. Don't the railroads, when the competition becomes

very keen and active, go out among the people and solicit their business?

Mr. BLYTHE. Certainly.

Mr. RICHARDSON. That is where the rebate commences, in their soliciting the people to come in and let them have their goods and take them at a less rate than the others, and there comes in the rebate.

Mr. BLYTHE. Of course, it is a cause of uneasiness to trade; there is no doubt about that. But I say this, I say that the history of this whole business where the rebates have prevailed the most, along the Missouri River towns, the whole history of it will show that the rebate is paid because it is exacted by the big shippers.

Mr. RICHARDSON. Right in that connection, what remedy have you to stop rebates? You admit they exist, that the railroads are guilty of this practice. What remedy, under the law, have you to stop this?

Mr. BLYTHE. I confess that upon that subject I do not see any remedy. The best remedy is the remedy that the Commission proposes, first, to punish every violation which you can discover, criminally punish the corporation which pays the rebate, and punish them so severely that they can not afford to take the chances. Severe pecuniary fines for paying rebates is the punishment best fitted and most likely to be effectual, and I am inclined to think that the remedy by injunction is the best remedy supplemental to the criminal feature of the law that is worth anything, or that can be devised.

Mr. RICHARDSON. Well, you admit, are bound to admit, I reckon, that if the custom and habit of rebates is not remedied, that that puts into the hands of a railroad corporation the power to advance one community and destroy another.

Mr. BLYTHE. It does not for this reason—the railroads are not a unit. You are not dealing with one railroad, nor are you dealing with a lot of railroads reaching only communities and markets common to all. You are dealing with a lot of railroads which have separate interests; and each railroad is influenced by the competition of its own markets, and with the markets of other roads, and the necessity of building up the traffic on its own lines.

One great vice in the whole consideration of this subject is in overlooking the fact that you are not dealing with one railroad, nor with all the railroads as a unit, although you are making a law applicable to all, but you are dealing with a lot of railroads with different interests, strongly and always in competition with each other; one set of railroads trying to build up one part of the country, and another set of railroads trying to build up another part of the country, and all watching each other in the most jealous way.

Mr. ADAMSON. And sometimes hurting each other as much as they hurt anyone else?

Mr. BLYTHE. Often hurting each other worse than they hurt anybody else, for the paying of rebates does not necessarily injure anyone. It is not malum in se.

Take this case of the rebate on packing-house products and dressed meats from Kansas City. It was established at the recent investigation by the Commerce Commission that for a period not a pound of those products moved out of Kansas City except upon the payment of rebates. It was also established that there was no discrimination and nobody was hurt. Omaha did not complain. Cedar Rapids and Des Moines and other places similarly situated did not complain. They were not

hurt. The traffic was moved at 5 cents a hundred below the published rates. The only offense against any law or against any principle of justice was the offense against the statute, the act to regulate commerce, requiring an adherence to published tariffs. That was the only offense. The stuff was carried to the markets cheaper, and reached the consumer cheaper, and what followed when it stopped? The evidence showed that large amounts had been paid in rebates. When that was stopped, the price of beef almost contemporaneously went up all over the country and people said it was the beef trust. But is it not possible that the cutting off of the rebates added to the cost of getting beef to the markets, and that this increased cost had a tendency to raise the price?

Mr. RICHARDSON. Then you think there is no such thing as the beef trust?

Mr. BLYTHE. Oh, I do not say that. I do not say that at all. I know there is. I do not say, either, that that was the only factor that raised the price of beef, but I say that may have been one of the potential factors.

Mr. ADAMSON. Did that pay the roads for the service they rendered?

Mr. BLYTHE. That comes to another branch of this subject, which is the subject of making rates.

Mr. ADAMSON. I thought it might help you to relieve the condition in the beef market by publishing those rates minus the rebates that are paid.

Mr. BLYTHE. That is one of the methods that is proposed. It is a pretty drastic measure.

Mr. ADAMSON. I wanted you to do that voluntarily.

Mr. BLYTHE. You can not do it voluntarily, for the reason that the rate is too low. The rate actually received on packing-house products and dressed beef is too low, but made temporarily under the stress of severe competition.

Mr. ADAMSON. That is the first question that I asked.

Mr. BLYTHE. Undoubtedly the roads suffer by it. The rate is too low and the roads can not afford to maintain that rate.

Mr. ADAMSON. That is the first question that I asked you, If you paid for the service?

Mr. BLYTHE. I asked a member of the Commission the other day what he thought of the published rates of the packing-house products from Kansas City to the seaboard, and he said he thought the published rates were too low; and I believe that if the Commerce Commission to-day was charged with the duty of fixing the rates, one of the last things they would to-day think of would be cutting down published tariff rates on packing-house products and dressed beef. Why? Because those products do not to-day bear their just proportion of the burden of the cost of transportation. The roads have to get their pay out of their business, and packing-house products and dressed beef do not pay enough, relatively, to other things.

Mr. COOMBS. You contend that the consumer gets the benefit of that?

Mr. BLYTHE. I contend that the consumer did get the benefit of the rebate, to an extent.

If you will permit me, Mr. Coombs, the packing-house interests are not always harmonious with the railroad interests, and I find myself sometimes differing from them and I have not any brief for them at

all. But the packing houses of this country have done an enormous service to this country in reducing the price of meat products, the products from all sorts of live stock, to the consumer. They have economized. They have spent vast sums of money in utilizing and learning how to utilize, and give to the consumer, all the possible products of cattle, and hogs, and sheep, and so on. And they have pursued a very wise policy. They have been wiser than most men who have in some sense a practical monopoly of a trade. They have aimed everywhere to put their products at the door of the consumer at the least possible cost and that is the principal feature of the complaint made before this committee.

Who is it complaining here? It is the middleman, the middleman who is being eliminated, and properly eliminated from the trade of this country, by the action of the great firms in bringing their products right to the consumers themselves. "From the factory to the foot," as the sign of one of the shoemakers reads. I do not attack the middleman. He has had a most valuable economic place. He has to-day in many things. You can not eliminate the middleman entirely. But to the extent that every profit can be eliminated between the man who must get a profit for his labors in producing anything that meets human wants, and the man who is finally to consume the thing produced that is an advantage to the world.

Everything that cheapens these articles, everything that adds to comfort, gives more shoes to wear, and better houses and more clothes, is for the benefit of mankind. The beef trust does that, and it has done it for twenty-five years, not as a trust, but these packers, these large aggregations, that capital which I am willing you should call the beef trust. Swift has done it, and Armour has done it, and Nelson Morris has done it.

Mr. RICHARDSON. And they do it through the medium of rebates?

Mr. BLYTHE. Sometimes, and to some extent; not always nor principally.

Mr. RICHARDSON. But that is one way?

Mr. BLYTHE. Not always.

Mr. RICHARDSON. I want to get information about this, of course. Suppose all those interested got the privilege of a rate, who would have a right to complain if there was no discrimination, or no discrimination between that class of people, who would have a right to complain, who is hurt?

Mr. BLYTHE. Nobody did complain, Mr. Richardson.

Mr. RICHARDSON. Who would be hurt?

Mr. BLYTHE. Nobody would be hurt; nobody was hurt in the case as was shown in the recent investigation.

Mr. RICHARDSON. Does it not lower the cost of the products to the producer?

Mr. BLYTHE. Certainly.

Mr. RICHARDSON. Does not that tend to this argument, that instead of some arbitrary standard or rate there ought to be some elasticity of that rate?

Mr. BLYTHE. Do you want me to answer that question?

Mr. RICHARDSON. Yes.

That question goes somewhat outside of the range of the bills under consideration. I myself believe that there is no possible middle ground between absolute commercial freedom of the railroads and

Government ownership. In saying this I do not wish to be understood as objecting to such supervision as may be found in practice necessary to enforce an observance of the principles of the common law which have been declared in the act to regulate commerce, and am talking about commercial freedom only. The Federal judiciary has consistently held that the act to regulate commerce was not intended to limit the commercial freedom of the railroads and did not have that effect.

Judge Jackson, in 1890, three years after the enactment of the act to regulate commerce, said, in a case reported in the Forty-third Federal Reporter (p. 37):

Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits.

The Supreme Court of the United States has three times cited that language at length, and the last time in this very much talked about maximum rate case, reported in 167 U. S., 493. Now, I myself believe that railroads are to be treated, as they always have been treated under this Government, as private enterprises. I believe that the making of rates can and must be governed by what Mr. Nimmo referred to the other day as the "interaction of forces;" that the rates will adjust themselves if not interfered with, but left to the laws of trade; that they are made by a grinding process, by the pressure from all the circumference everywhere upon a center. That is so and always has been so, and there never has been a rate made in any other way, and that in itself is the only safeguard, and I believe it is an efficient and complete one.

There is the other policy, the Government ownership, which I believe would bring the commerce of this country into inextricable disorder in thirty days—I do not know but in thirty minutes.

Unless some member of the committee wants to ask me some questions, I would like now to talk about the rate-making power.

MR. ADAMSON. If the Government should authorize the Commission to make rates, and the rates which they made affected or seriously injured the railroad, would that action be accompanied by an obligation on the part of the Government to recoup or make up the loss to the railroad?

MR. BLYTHE. I never knew or heard of any legislative act, except those in the exercise of eminent domain and like matters, no matter whom it might menace, being accompanied with any provision that the State would make good any losses suffered by a subject of the State. Of course, there can not be.

MR. ADAMSON. You think the Government ought to take such action as that if it is not so accompanied?

MR. BLYTHE. If the Government makes a mistake there can be no reparation, and for several reasons. No government ever stood behind the subject to protect him against the consequences of general legislation. You can make a tariff law that hurts a lot of people—

Mr. ADAMSON. If the Government does not repair injuries, ought the Government to inflict injuries?

Mr. BLYTHE. Of course, I am very glad to notice that suggestion. That is a grateful one to me.

I do not think that the Government ought to do anything unless it is very clear that the public good on the whole is so imperatively involved that the incidental injury to individuals must be ignored. Of course, the Government ought to be careful how it invades anybody's rights. And I say further that the presumption is always that legislation of this sort, any legislation which disturbs conditions which have existed for a long time in a Government like this, any legislation which disturbs commercial relations, will hurt somebody, and therefore it ought not to be indulged in unless it is most imperatively demanded by the general welfare.

Mr. ADAMSON. What condition would the public be in as to remedial or corrective proceedings if we authorized the Commission to make rates, if we should then get three good railroad men on the Commission?

Mr. BLYTHE. The best railroad men in the world—it does not make any difference who they are—take the best ones, take those who would try the hardest to do justice to the railroads, there are no three men who can cope with that question at all. There is nobody competent to do it—least of all the Commission. They say they are experts. They are very worthy gentlemen, but they are not experts.

Mr. ADAMSON. I suppose if the Commission was vested with the power to make rates it would be to the interest of somebody to see that the appointees were favorable to the railroads.

Mr. BLYTHE. Of course there is that suggestion that I am very reluctant even to hint at, that giving this power to the Commission will necessarily invite a participation in politics on the part of the persons who are interested, which is very much to be deplored.

Mr. ADAMSON. Would it not be imperatively necessary for the railroads to try to do it?

Mr. BLYTHE. I would not like to go as far as that, but I would say that the temptation was very great. The act to regulate commerce, so far as its general principles go, was for the most part declaratory of the common law. There are three or four sections in the act, all of them directed against excessive rates, which means, of course, extortionate rates, giving undue preferences or making discriminations, and the so-called long and short haul clause, which is only a prohibition of a specific kind of discrimination. Every other feature of the act to regulate commerce was purely remedial.

The act was declaratory of the common law, and remedial, and that is distinctly recognized by the Supreme Court of the United States in the language which I have read, quoted from the opinion of Judge Jackson. That was recognized by the Commission itself in repeated declarations, and I want to say now, to the committee, that the assertion by the Commerce Commission, or the individual Commissioners, that their right to fix rates never was questioned, is not consistent with the history of the Commission, or with their own adjudications. On the contrary, the Commission never attempted to exercise, never asserted, the power to make rates, until at least three years, I think—I am not sure about the time, but for a considerable period—after the enactment of the law.

The Supreme Court of the United States—I have not the language here and can not quote it exactly, but in the decision in 167 United States—in the maximum rate case, Justice Brewer quotes from Judge Cooley language to the effect that the Commission in that case could not prescribe a rate because it had not the evidence; but that in a general way it had not the power to make rates, and the Supreme Court says there is no shadow of foundation for the claim that the Commission had power to make rates, to be gathered from the four corners of the act.

The claim on the part of the Commission that the act to regulate commerce had conferred the power to make rates was the outgrowth of its discovery that it already had an enormous power, for the exercise of which it was responsible to no one. I need not point out to you the boundless visions that will invade the minds of men hypnotized by the habitual exercise of irresponsible power.

Here is a Commission, extra constitutional, and bound to nobody. It can be discharged by the President for incompetency. Otherwise it is absolutely irresponsible. The trouble with them is they want a lot of power which it was never intended they should have, and they themselves never supposed they had, until several years had passed by from the time the Commission was created. I say this with great deference, and asserting my profound regard for the personal character of these gentlemen.

Now, only one of these Commissioners in his remarks before you has suggested any reason whatever why the power to make rates is applicable to the mischiefs which have been complained of.

Commissioner Knapp had a great deal to say about discriminations and payments of rebates, and a great deal to say about certain remedial aspects of this bill, in most of which I concur with him; only I think he very much exaggerates and overstates in his own mind the extent and evils of rebates. Mr. Commissioner Prouty, however, did give a reason as to the power of making rates, which, if true, might justify the interference by the Congress through the Commission, or by some other way, in respect to the control of rates, and that was that the enormous aggregations of capital controlling these railroads, the consolidation of railroads, the community of interest, as he called it, was after a while going to put power over rates in the hands of some two or three men, and the result would be to increase rates above what would be reasonable and in the end to strangle commerce, and therefore somebody must have authority and power to interfere; not because he believed that condition now existed, not because the rates are too high—they are not too high—and Mr. Prouty said so here, but because of the evils that he fancies may hereafter exist if this sort of thing goes on.

Now, it seems to be perfectly clear, as shown by Commissioner Knapp's remarks, that the power to make rates has no sort of relation to the evil of discrimination or to the evil of the payment of rebates. How is it possible that a rate prescribed by legislation or by Congress directly should have any more sanction or be any more inviolate than one established by the railroads themselves? The sanction of the rates is just the same. The rate fixed by the railroad in itself operates as and is just as much a part of the law, and just as obligatory upon the railroads, as though it was fixed by Congress. And it is just as easy to give secret concessions from published rates or to pay rebates in one



case as it is in the other, so that the method of fixing the rates has no application to the rebates.

Has it any discriminations?

It has reference to the discriminations only where the making of a rate would go so far as to touch the discrimination itself.

Now, what is the discrimination? It may be, of course, between individuals engaged in the same trade on the same railroad, in the same trade but upon different railroads, or between enterprises engaged in a like trade on the same railroad, or it may be between markets, either the sources of supply or the points of distribution. Therefore no legislation, no fixing of rates, can touch the matter of discrimination unless it involves the whole field and the fixing of differentials. You have got to consider the whole subject of the classification of rates and the relation of rates and of communities and markets in order to touch that question. So that the making of a rate in a specific case to meet a particular complaint has no reference whatever to the general question of discriminations which Mr. Knapp and Mr. Prouty say is such a crying evil.

By the way, while I think of it, I beg to commend to the committee a pamphlet written by Mr. Nimmo, which is a review of the Eleventh Annual Report of the Interstate Commerce Commission, and is a most interesting and valuable contribution to the literature of this whole subject, and unless the committee has it already furnished to them I will make it my business to have copies furnished.

Now, gentlemen, as to the question of how railroad rates are made. No schedule of rates was ever made by any railroad manager as a new matter at the beginning. They were based on and determined by the charges for other means of transportation—by team, canal, or what other method of transportation there was existing before the railroads, and they have gradually been changed and revised as became necessary to meet changes in conditions, not only the conditions of cost to the carrier, but also the conditions under which producers have competed with each other, and the springing up of new industries in different parts of the country, and the discovery of new inventions. Tariffs have been revised from time to time, and changes in classification have been made, particular rates put up and down to meet varying business conditions, but rates and classifications have never been made by any one arbitrarily.

The law of Iowa in 1888 erected a railroad commission and directed them to make a schedule of rates and classifications. Having first declared all these principles of the common law and having declared the long and short haul clause with great particularity in a way never used anywhere else, what did that commission do? Did it sit down and philosophically work out a schedule and classification for itself? By no means. It adopted the classification which the railroads themselves had made, and which had been in force for twenty-five years in the State, without changing one letter in it. It did not even have it reprinted, but it sent around to the railroads and got a lot of copies and brought them to its office and stamped them with a rubber stamp as the "Commissioners' classification." That is what that commission did. What did it do about rates? It took the Chicago, Burlington and Quincy schedule and the Rock Island schedule, and the others—they are all alike—and set a man down with pen and ink to figure out a horizontal cut in the rates; and if it had not been that there was one

very sane man on that commission, a very wise and prudent man, they would have done that. But Colonel Dye kept it within certain limits, and the result was they only planed off about 13 per cent; and that is as near making a new schedule as anybody ever came.

Mr. SHERMAN. I guess we had better get a search warrant out for that man.

The CHAIRMAN. The hour for the meeting of the House has arrived, and will it please you to go on to-morrow at half past 10?

Mr. BLYTHE. It will suit me very well indeed, thank you. Indeed, it will be a convenience to me, because I would like to get through to-morrow.

(Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, Wednesday, May 7, 1902, at 10.30 o'clock a. m.)

---

WEDNESDAY, *May 7, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

#### STATEMENT OF MR. J. W. BLYTHE—Continued.

Mr. BLYTHE. Mr. Chairman and gentlemen, yesterday I stated that the making of rates had been a process of evolution; that it had been a growth, but the making of rates in itself is not the only thing. The apparent making of a rate between two localities on one railroad is not in itself the most important thing in the fixing of rates, but the question of differentials, the question of the relation of rates as between communities and between industries and between different commodities, is the most difficult as well as the most complex feature of rate making.

These differentials—the relation which the rates from one community bear to the other, and from the same point of origin, perhaps, to a third community, or between two communities like Chicago and Boston on the one side and St. Louis or Newport News or Baltimore upon the other side—add vastly to the complexity and the difficulty of the question. The rates have been adjusted by this slow process of growth from the beginning, with reference not only to the incidentals of a particular commodity being shipped between two points, but of that commodity with reference to other commodities in active competition with it for the same uses, not only between those points but from all points of origin to the markets which that commodity seeks.

To illustrate, I have before me a tariff of the Chicago, Milwaukee and St. Paul made jointly with the lines east of Chicago upon flour for export. The rate from Baltimore to Minneapolis and St. Paul is 17½ cents. That is the minimum rate to any seaboard point. The rate to Boston is 20½ cents, a difference there of 3 cents between Minneapolis and St. Paul to Baltimore on one hand and Boston on the other hand at the seaboard. Now, those relations must be preserved, and if not preserved must be departed from for the gravest reasons, reasons which are not only influential to the carrier itself, but which will command the approval of the community served, and of other carriers competing for the same business between the same points, or between rival and competitive points to those points.

The competition of markets, the competition of the sources of supply, and the competition of the markets, the points of consumption or distribution, are the material things which go into the making of rates, and so when a new enterprise is about to be started, if a new mill is to be built, if a new factory is to be put into operation, is to be constructed, whether it be a beet-sugar mill or a cotton factory or a drain-tile factory, or whatever it may be, the very first question which confronts the investor is, "What rates can I get from that point to the markets and territory in which I must sell my goods; will they be low enough to enable me to compete there on equal terms with other manufacturers producing the same articles at other points?"

So what does he do? He goes to the freight agent of the railroad or railroads which must serve him, perhaps only one, and perhaps several, and he says to them, "What can you do for me?" The freight agent says, "What is it necessary for me to do for you; what sort of competition have you to meet; what and where are your rivals in the production of this article," whatever it may be, "what are the competitive terms upon which you have got to get into the market?" And after a little while, by the process of negotiation, they ascertain what is the rate that that commodity must be subjected to in order to put the producer upon an equality with his competitors.

Now, perhaps the rate will be prohibitive, and if so the project will die right there, and perhaps a rate can be made with a just regard to the interest of the carrier and such that it will further and promote the industry. Usually the latter is the case, because the carrier is interested in promoting, to the extent of its ability, every industry that can be put upon its lines. In the building up of the regions served and of their industrial activities is to-day the most important part of a railway manager's duty, next, of course, to the maintenance of his property.

Now, this difficulty of the competition between the various sources of supply and the various markets which are sought, either of consumption or of distribution, is not purely theoretical, but has been fully recognized by the Commission from the very beginning. I wish to read an extract from the seventh annual report of the Commission:

To give each community the rightful benefits of location to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonably just to both shipper and carrier is a task of vast magnitude and importance.

They state there the vastness and magnitude of this undertaking. Then, to show that the Commission itself did not shrink from this undertaking, they add: "In the performance of that task lies the great and permanent work of public regulation."

That is what the Commission wants. It wants the power not only to say what the rates shall be upon products from Missouri, Iowa, and Illinois to the markets of the world, to regulate not only the domestic rates within the United States, but also to regulate the rates at which these products of the soil shall be exported; not only to say what the carrier shall charge, what differentials shall be between points on its own line, not only to prescribe the rates which may be excessive or extortionate in a particular case, but they undertake to say they are equal to deciding what is necessary to give to each community the rightful benefits of its location, and to keep different commodities

upon an equal footing, so that each shall circulate freely and in natural volume.

Was any power such as this ever granted to or ever demanded by any tribunal except this? Mr. Nimmo, in his remarks before this committee, spoke of this as an autocratic power, and said the Commission, if granted this, would be an autocratic body. Did his statement go too far?

Of course I do not say this offensively, for even the most upright, honorable, patriotic, and able men would not be competent to exercise such universal power as this. That an irresponsible body, extra-constitutional, not erected within the constitutional limits, not responsible to any department of government, should possess such power as this would transcend, I verily believe, anything in the history of the Anglo-Saxon people.

The magnitude of this task is such that to-day there are thousands of men actively engaged in dealing with it. Every railroad in this country has a large staff of trained, expert men. Mr. Bird testified that he had been in the railway service, I think, for thirty-five years; beginning as a night watchman he has served through all the grades of the service. Mr. Bird is not an exception. Every railroad in this country has a man, not perhaps the equal, not perhaps of so long an experience as Mr. Bird, but similarly educated and similarly charged with the duty of superintending and looking after this rate problem as it affects the local conditions of that particular road. It is not done perfectly; it is done subject to the limitations of human nature, but it is not done arbitrarily. There is no such arbitrary power lodged to-day in the hands of the railroad companies, or in the hands of the men engaged in the superintendence of traffic, as this bill contemplates, because, as I have tried to show, the adjustment of every differential, every difference of rates, and every relation of localities to each other, and the commodities to each other, has not been due to the voluntary and specific exercise of any will or any judgment, but it has been by the slow higgling in the market, extending over forty years.

Is this to be disturbed and to be brushed aside by the arbitrary judgment, or, if you please, the informed and patriotic judgment—I do not want to use offensive language, let it be the judgment of the best and most informed men—of three or five men substituted for what, after all, is the agreement of the minds of all the interests in the country upon what these rates shall be? What has been the result of this power? Take the Eau Claire lumber-rate case. In the Eau Claire lumber-rate case, what did the Commission attempt to do? They attempted to say that the Eau Claire rate should bear certain relations to the rate from La Crosse and other points at which different relative rates had for a long time been maintained, which had been established through a long process of negotiation and disinterested arbitration to which all the parties had consented.

What was the result? The St. Paul Railway Company decided, as Mr. Bird testified, to accept the ruling of the Commission. It was to its interest to accept it; to its interest because it was interested at Eau Claire, and in a less degree at La Crosse and Winona, and therefore its interest was to conform to the judgment of the Commission. It did conform, and what was the result? A condition of chaos throughout all that region, and the practical impossibility was demonstrated of carrying out the award of the Commission in that case, and

the former relation of rates, was restored. And the Commission, by the way, never attempted to secure any judicial sanction of its order changing that relation. And the relation exists to-day as it did before under the Bogue award, substantially. Now, there was another case. What did the Commission attempt to do there? I refer to the case of the differential—the Chicago freight bureau case. It is what is called the maximum rate case (reported in 167 U. S.). Certain differentials prevailed from Chicago to the southern points—Atlanta, Augusta, Social Circle were the primary points named in the investigation, but it involved a very large region in the South. Differentials had been established and maintained from Chicago and Cincinnati on the other hand, and the region south of the Ohio River. They had grown up and had been evolved by a long experience, and had been acquiesced in not only by the rival carriers, but for the most part by all communities and individuals interested.

But that was not all. All the Atlantic coast and all New England was competing for the same business, and long experience had shown that certain differentials should be maintained, so that not only the carriers might have a margin of profit, but also that the communities served should prosper. There was very little complaint. There was no complaint in New England, and none from Chicago, and none from Cincinnati, except that the freight bureaus of those places were complaining a little because they were trying to get an advantage over each other, as in the La Crosse and Eau Claire case; but there was no substantial complaint from the people. The complaint came from the South, from Social Circle. That was its origin. The Commission undertook to make an order there changing the differentials which had been for years in effect. But the Supreme Court said they had attempted something they had no power to do, and of course the judgment of the Supreme Court in that case is the gravamen of the complaint to-day; it is the burden of the cry coming up to this committee that the Commission must be given more power.

I cite these cases to illustrate the kind of power that the Commission asks. If it were possible to give the Commission the power to fix the rate in a particular case, after a particular investigation from which it should appear that a rate was so obviously extortionate that it should be corrected, this would not be such an enormous task. It would not be so full of menace for the future. Its presage of turning everything upside down would not be so apparent. But that is impossible. These roads are all involved and the rates are all involved; not only the rates upon the particular railroad, but the rates on one railroad affect necessarily and involve the rates upon a railroad hundreds of miles away.

For example, the rates upon the Great Northern Railroad carrying wheat into all the markets, primarily into Minneapolis, St. Paul, Milwaukee, and Chicago, but ultimately into all the markets east of there, must bear a certain relation to the rates charged by the Santa Fe Railroad, 500 miles away, carrying wheat from Kansas and the Indian Territory and Oklahoma to the same markets. These rates are all necessarily dependent upon one another, and all have been established by a long series of considerations and a long experience. I can not dwell too much upon that, that they have been established by a long process of experience and evolution, and they have been adjusted so as to bring about a relation between widely separated sections of the

country and markets which must necessarily compete for the consumption or the distribution of products.

Such a task as this can be satisfactorily worked out only by the methods which have heretofore obtained—the free competition of the carriers, of the producers, and the open markets. Even so, it has not been perfectly done; that is, absolute mathematical justice has not always been attained. But there has been as near an approach to exact justice as ever is attained. Indeed, I do not suppose that there is any business in the world that is conducted relatively to its importance and its magnitude as fairly, where there is as little friction, where there is as little just cause of complaint, as in this business of the carrying trade. I think it is not without the knowledge, perhaps, of the chairman of this committee, that through all the vast region in southern Iowa and Nebraska, with which he is very familiar, there is absolutely no complaint to-day of the service or the rate charged by the railroads serving that country from the producers of the country.

A few years ago the conditions were very different. There was an excited public opinion growing out of causes, some of which were imaginary and some of which were real and some of which were like other phenomena produced by the hot winds blowing up from Kansas; but that has all disappeared. We have no trouble and no litigation in that country to speak of; we have no litigation with the producers and only a little with middlemen. But except for middlemen the whole country is quiet on this subject of freight rates, and not a complaint has been made to this committee, and, as I believe, not a single complaint has been made to the Interstate Commerce Commission of extortionate rates or discriminations.

Mr. STEWART. Is not that due to the fact of the producers not having any immediate connection with the railroad companies he deals with the middlemen?

Mr. BLYTHE. He deals to some extent with the middlemen, but I believe there is no sentiment which is expressed so quickly as a sentiment of injustice on the part of the producers of the land. It is reflected at once in political agitation. If there is a discontent, if there is a grievance, if there is really anything to be complained of on the part of the people it is at once reflected in political discontent, and a few years ago a wave of agrarianism passed over the West, resulting in the Potter law in Wisconsin and the maximum rate law in Iowa and similar legislation in many of the States.

Mr. STEWART. Tending to correct—intended to correct—those evils.

Mr. BLYTHE. That political agitation has all disappeared. There is nothing left of it. If there were a grievance, if there were faults to be found, it would be reflected to-day in the politics of that country just as it has been in the past, and just as other evils affecting the producers are reflected in the politics of that region to-day.

In the making of rates there are a great many elements, of course, to be borne in mind. Not the least of those is the cost of carriage to the carrier. That exact and careful computations of cost are ever now made with reference to a particular commodity occurs only in those cases where new industries are to be erected, or where commodities, for one reason or another, must seek a very low rate. For example, the promoters of the "good-roads movement" asked the railroads to make low rates upon road material, which the railroads were glad to do, but when the traffic managers investigated it they

found that any rate was prohibitive which would meet the cost to the railroads, and temporarily, of course, the thing had to be abandoned.

It is obvious, however, that there is a limit below which no carrier can undertake to carry a commodity; there is a limit below which it is prohibitive upon the carrier, just as on the other side there is a rate prohibitive upon the shipper. Between those limits the rate is to be established, and not only with reference to the necessities of the shipper in a particular case, but also with reference to his interest as related to the others in the same trade and dealing in commodities for the same market. I think that the more the nature of what the rate is, the nature of railroad rates and the way they are established is understood, the way they are made, their necessary relation, not only to rates upon the same commodity in other parts of the country, but relative to related commodities, and the necessity of maintaining just differentials between the different communities, it will be seen that the Commission is not and will not be able to sustain the magnitude of this labor.

The Commission itself, however, indicates that it would only exceptionally be called upon to perform this duty. If that is true, it would seem that the evil complained of is not so very great, and, indeed, I wish to emphasize again that the Commission has pointed out no reason why the rate-making power should be conferred upon them except that which was pointed out by Commissioner Prouty when he pointed out that the danger was not a present danger, but a danger arising from the consolidation of interests, and a danger for the future.

Now, Mr. Chairman, it is important, I think, to examine for a moment whether it is at all probable that the consolidation of railroad interests will of itself subject the country to any danger that rates will be made extortionate. In the first place, as a railroad company can raise its rates it must decide what the effect of that must be on its own traffic.

A very slight advance in the rates upon corn will leave the corn in the crib, or will burn it for domestic uses all over the State of Nebraska. The chairman of this committee has known of years when the corn crop of Nebraska could not be moved at all, because the demand for corn was so small that corn could not be profitably transported even from central Iowa to the seaboard. Repeatedly it has been true that the railroads have had to temporarily reduce their rates below the cost to them of hauling, in order to get corn out from Nebraska, and haul coal in at a low rate, to induce the farmers not to burn corn rather than ship it. Why? What was the interest of the railroad companies to do that?

The same reason that to-day will impel a manufacturer in this country to pursue his trade in Great Britain or Germany in respect of some manufactured commodity when he sells at a loss over there. He can not afford to give up his market; he can not afford to lose their trade. The railroads can not afford to have their country depopulated. All the railroads of the West were building up the region, especially the region west of the Mississippi River; for forty years that was their great work.

The CHAIRMAN. Is it not true that the Burlington Railroad in Iowa was operated for nineteen years before a dividend was issued?

Mr. BLYTHE. I think for more than nineteen years; I can not give the exact number of years, but it was operated for a great many years before a dividend was declared. The construction of the Burlington

road was begun west of Burlington in 1854. There was no dividend upon the stock of that company. That was completed through to the river, I think, in 1868; you will be perhaps able to correct me on that, Mr. Chairman—

The CHAIRMAN. 1869.

Mr. BLYTHE. 1868 or 1869. It was then completed to the Missouri River. There was never a dividend upon that property until after 1871. The stock of the Burlington road sold at about 26 cents at sheriff's sale, and there were no buyers for it, in 1870 or in 1869. It was sold then to Eastern purchasers. I said there were no purchasers; I mean there was no competition; nobody wanted it at 26 cents.

Mr. STEWART. What is the stock worth now?

Mr. BLYTHE. The last sale was 200; all sold in a bunch.

Mr. RICHARDSON. Does it not occur that the value of railroad stock is frequently depressed, not so much by the lack of earnings by the road, as from other circumstances; for instance, the issuance of bonds?

Mr. BLYTHE. It went to the Missouri River. It was afterwards sold to the Chicago, Burlington and Quincy; there were no circumstances to depress that stock except that it could not earn any money. It was a cheap railroad.

Mr. RICHARDSON. But does it not occur sometimes?

Mr. BLYTHE. Undoubtedly it does; undoubtedly. There are a great many mistakes made in financing railroads.

Mr. STEWART. If you had not extended the system to the Missouri River, would not the stock have remained at the same low figure?

Mr. BLYTHE. I do not know. The extension was like railroad rates; it was enforced; it was compelled, and we were driven to it.

Mr. STEWART. And the reason of the depression of the stock was that the facilities were not what they should be.

Mr. BLYTHE. There was nothing in that country. The reason stock was low was that nobody lived in that country; it was a wilderness; it had to be improved; it had to be peopled; it had to be built up. There was nothing there but a few roving herds of cattle when your chairman first knew it.

Mr. TOMPKINS. And buffalos?

Mr. BLYTHE. Not any buffalos quite as late as that, but there had been a short time before that.

Mr. STEWART. The stockholders did not lose anything eventually?

Mr. BLYTHE. The original stockholders lost pretty nearly everything they put in.

Mr. RICHARDSON. Is that not generally the case?

Mr. BLYTHE. Very frequently.

Mr. RICHARDSON (continuing). That the stockholders are the people who suffer through consolidations and purchases that are made taking a road out of their hands, other people realizing the benefit?

Mr. BLYTHE. Very often so; not always. Take the Chicago, Burlington and Quincy Railroad. The Boston interests bought in the Chicago, Burlington and Quincy when it was a little disjointed road. They held on to their interests. They finally bought the road in Iowa. The Iowa people went over to the Boston people who represented the Chicago, Burlington and Quincy and interested them in building the road on. The Boston people held on to their interest, and they made a great deal of money out of it. There was very little



change in the Burlington ownership except from the expansion of its capital as the improvement and management of the railroad went on.

Now, gentlemen, on this subject of consolidation, the first question that a consolidated railroad meets is How can we increase our tonnage; how can we increase business? Because it must be remembered that every concern that is rich enough to absorb a lot of other railroads has credit enough, has means enough, to make the kind of railroad it needs and furnish the kind of equipment it needs. Every car of a railroad is in constant and active competition with every other car of the same railroad, because it is obvious that a railroad company can better afford to haul two cars at \$10 profit than to haul one car at \$7 profit. Every part of the railroad is in active competition all the time with every other part of the railroad, and every unit of its transportation facilities is in active competition with every other unit. That, perhaps, is not economic language, but it is language that can convey my idea better than if I attempted to put it in more exact form.

The competition of the railroad itself, the necessity under which it lies to do the utmost possible at the lowest cost—that is, at the rate which will promote the business most—is so urgent all the time that that is the one thing to which it will devote its energies.

It appears in the suits against the Northern Securities Company and others that the rates have been reduced since that company acquired the Northern Pacific and the Great Northern railroads; it appears affirmatively in the answers which they have just filed that reductions have been made in the rates which, upon the same volume of business, would decrease the earnings of each of those companies about \$1,000,000 annually.

MR. RICHARDSON. Do you not think the tendency of the consolidation of the railroads of the country looks to finally presenting the question of Government ownership?

MR. BLYTHE. That is a very large economic question, Mr. Richardson.

MR. RICHARDSON. Is not the tendency of the country now toward consolidation?

MR. BLYTHE. I think so; yes, sir.

MR. RICHARDSON. And is not that bringing forward the question of Government ownership more prominently?

MR. BLYTHE. I think so.

MR. RICHARDSON. There is no medium ground, is there? It must either be governmental ownership or the railroads controlling themselves?

MR. BLYTHE. Logically, as I said yesterday, I believe there is no middle ground between absolute commercial freedom to the railroad and governmental ownership, if the interests of the carriers are to be preserved as well as those of the competing communities. When I say commercial freedom I am not speaking of police regulations, I am not speaking of the regulations which are known at the common law, and which are properly enforced, these restrictions that have grown up with our Anglo-Saxon jurisprudence, but of commercial freedom and Government ownership. There may be all sorts of police regulations, there may be all sorts of remedial regulations, all sorts of agencies interposed to prevent extortionate rates, and secret rebates, and all those things which the common law prohibits; but, commercially I believe there must be absolute freedom.

Mr. RICHARDSON. Then, do you believe the consolidation of railroads tends to the interests of the commercial public?

Mr. BLYTHE. Let me take a case for purposes of illustration. What is now known as the Chicago, Burlington and Quincy Railroad is a railroad made up of the consolidation of more than 60 separate corporations. Some of them, it is true, were formed for the purpose of building extensions; most of them, however, were independent. Many of them, at least, were formed as independent organizations with no idea, either on part of the promoters or the Chicago, Burlington and Quincy Company, that they would ever be consolidated or united in interest. The Chicago, Burlington and Quincy, to sketch it briefly, was built from Chicago to Aurora. The Central Military Track Railroad began at Aurora and extended to Galesburg. They were independent; they were operated independently. The Burlington began at Peoria and went to Galesburg and Monmouth and to the Mississippi River and over to Burlington, and that was operated independently.

Finally the legislature of Illinois authorized the consolidation of those three lines, and they were put together. That was then the Chicago, Burlington and Quincy Railroad. Afterwards it bought the Iowa property and extended it through to the river. Afterwards it acquired the Burlington and Missouri River Railroad in Nebraska. That was not until 1878, I think. Am I right, Mr. Manderson?

Mr. MANDERSON. Yes.

Mr. BLYTHE. In 1873 it acquired the Iowa property, in 1878 the Nebraska property. Later, in 1880, it acquired a railroad running from Council Bluffs to Kansas City. In 1883 it acquired the Hannibal and St. Joe. All of these railroads were independent, and not only independent but properties which at one time or another had belonged to rival concerns.

What has the effect of that been upon the country? There is not an inhabitant of that country who will not be a willing witness to the fact that those consolidations have promoted the interests of the country in every way. They have resulted in lower rates, better service, in more facilities of every sort to the communities which they attempt to serve, through service, facilities of a great many kinds which are impossible on small and disjointed railroads. What has occurred with sixty corporations I do not think will fail to be repeated with the experience of railroad consolidation when we unite three other great concerns like the Great Northern, the Northern Pacific, and the Chicago, Burlington and Quincy into one. The effect will be to reduce rates. It can not help but do that, in my opinion, because the very purpose of this purchase by the Northern roads was to give them entrance over their own rails, or friendly rails, into communities which they did not already serve.

Mr. RICHARDSON. What becomes of competition?

Mr. BLYTHE. It is competition within itself. It is the necessity for doing the greatest possible volume of business that will contribute any profit—the necessity for making the utmost use of every part of the railroad—of keeping cars and engines and stations and the railway itself in the most active possible use.

Then there is another very active competition, you must remember—the competition of rival producers and rival markets. Take the lumber business. I live in a country which has no timber to speak of, the

same as you do, Mr. Chairman. We get our timber from various sources of supply. The white pine comes from Minnesota and a little still comes from Wisconsin. Hard wood, hemlock, and spruce come from Wisconsin and Michigan; yellow pine comes from the South, with various other kinds of timber, and hard wood from Missouri and Arkansas, and from the Northwest come substantially all of our shingles and a lot of other lumber from that region, in direct and in constant competition with lumber suitable for the same purpose, although not identical, coming from these other regions.

For example, the fir and the spruce of the Northwest come by the Billings route, over the Northern Pacific, and are distributed over Kansas and Nebraska and western Iowa in competition with hemlock and another kind of spruce from Wisconsin and Michigan, not carried in by the same railroad.

If Northwestern lumber, lumber from Puget Sound, and lumber from Nevada and from Montana is to be brought into Kansas and western Iowa, it must be brought there in competition with lumber from the South, and that lumber from Wisconsin brought in by the Chicago, Milwaukee and St. Paul Railroad and other rival railroads in active competition with them, and in the direst and fiercest competition all the time; and not only the competition of the railroads, but the competition in these regions supplying this lumber and all the men engaged in that trade.

What is true of lumber is true of everything else. It is true of iron ore and everything that is brought into that country for use. We are trying to build up all through the Mississippi Valley now a lot of industries.

Everybody is intent upon that. The railroad people and the people living in these communities are intent upon it. We have cheap coal in Iowa, Illinois, and Missouri, and they are trying to bring iron in, trying to bring hard wood in, trying to make plows and furniture and all sorts of things that come into daily use by the people of that region. Now, where do those materials come from? Hard wood comes from Michigan and from Arkansas. Iron may come from Alabama and it may come from Lake Superior. Who is going to carry it? The man who can carry it cheapest. The man who can lay it down to the manufacturer or consumer cheapest will bring it in.

There is no fear that competition in this country will cease, because, even if these five gentlemen who are held up here as a bugaboo by the Interstate Commerce Commission should sit down in New York and agree that rates from Alabama and Arkansas and Michigan and everywhere else should be the same on these things, the moment that they put those rates up the pressure will be felt by some manufacturer, some series of manufacturers, some set of communities somewhere else in the country that they serve, and there will be death where it is necessary for the railroad companies that there should be life and activity. Business will fall off, and these five gentlemen sitting around that table in Wall street who are going to fix the rates on these roads will not let business fall off very long. If it is necessary to make a cut of a cent, or a half cent, or two cents, or three cents, upon a rate, you need not be afraid of that, because the one thing they want is to make money on their investments.

Mr. COOMBS. Does not your argument tend to this: That the Commission is somewhat useless in regulating affairs?

Mr. BLYTHE. Do I take that position?

Mr. COOMBS. Is not that the theory of your position?

Mr. BLYTHE. Oh, by no means. I should very much deprecate any inference of that sort from anything I have said. I have tried to state that while I believe in absolute commercial freedom of these railroads—I believe that was the policy of the law in the origin, and I believe it is the policy of the law to-day, and I believe it is necessary if we are to get the best results—yet I do believe all those restraints which the common law has thrown around this business, all the prohibitions which the common law imposes upon carriers are wise and beneficent; and even if they were not wise and beneficent as original matters they have become ingrained in our Anglo-Saxon temperament and they ought not to be repealed, and they never will be repealed.

Those things are in the interstate-commerce law. The Commission is charged with doing everything it can. It is charged with giving a most vigilant scrutiny to all of the relations of the railroads to the people, with a view of seeing that those provisions in the act to regulate commerce are obeyed.

Mr. COOMBS. The reason I interrupted you was this—

Mr. BLYTHE. Excuse me a moment, for I wish to add something. I think that that is the most useful and most valuable function of the Commission, and one which it is qualified to perform and one which it has performed very well.

Mr. COOMBS. I want to bring you back and ask you from a railroad standpoint what you consider the particular utility of the Commission. We have not had a clear statement with reference to that.

Mr. BLYTHE. Not from anybody?

Mr. COOMBS. Well, I have not taken it so. I may have misjudged the language.

Mr. BLYTHE. That is a very difficult and very embarrassing question.

Mr. COOMBS. That is the reason I ask it.

Mr. BLYTHE. Because if I were to be entirely truthful and candid, which I always want to be, if I say anything, I should have to say that I believe that the Commission itself has entirely misconceived the purpose for which it was created.

Mr. COOMBS. I would like to hear you on that.

Mr. BLYTHE. That Commission for several years has been looking after power, forgetful of the fact that it was not any part of any of the constitutionally recognized departments of our Government. It is a bureau located outside of the Constitution, and charged only with the duty of reporting to Congress what it finds to be the facts with reference to the relations between the railroads of the country and the public.

Now, if the Commission had confined itself to examinations into violations of the law, to calling those violations to the attention of public officers charged with their redress or their punishment, as the case might be, to advising with a view to healing differences (and that part of the work it has done with some success, and, I must say, with a great deal of care), I think it might have done a great work. But the Commission has been misled by this desire for a power which Congress never intended it should have, and which it is very doubtful if Congress could give it if it tried.

I do not know that I have met your question, Mr. Coombs, but if not I shall be very glad if you will indicate what further you desire.

Mr. COOMBS. Taking that statement in connection with what you have said before with reference to the powers of the Commission, I think you probably have stated your position all right, if I understand your position.

Mr. BLYTHE. I believe, in other words, that the Commission may exercise advisory functions; that it should inquire into the relations of the railroads to the public; that it should report to competent authority any violations which it may find in discriminations, in extortions, anything which is out of joint; that it may make recommendations; that it may act as a medium of negotiations between parties whose relations are so strained that they can no longer negotiate between themselves, if there are any such instances I do not know of any, I have not heard of any myself, but I read in the statement of one of the Commissioners before this committee that they had letters on file from people saying that they did not want their names to be disclosed, for they were afraid they could not get along well with the railroads.

If there are such cases the Commission ought to act upon them. I never heard of such cases myself in twenty-five years' experience. I do not believe that in our country any such cases exist on the part of men who are really competent to do business.

I wish to add one word upon a subject which I discussed yesterday, and that is the extent to which this power to make rates could be revised by the Federal judiciary if conferred upon the Commission.

The Supreme Court, in the Maximum Rate case, decided that the determinations of whether an existing rate, with reference to the existing circumstance was reasonable or not, was a judicial question; that with the determination of that question the judicial power ceased, the determination of the reasonableness of the rate, of the appropriate rate, or fixing a rate for the future was a legislative question purely.

Now, the Commission desires to have the power to make rates for the future, to make rates, as I have said before, involving not only the specific power to make rates, but all that goes with it, of fixing differentials, fixing relations between communities and between individuals, and they profess the willingness that there may be an appeal from their orders in this particular to the judiciary.

Now, if the committee please, I wish to call attention to this point particularly. That so far as a review of the court of their power to fix rates for the future, or any order that they make for the future, is concerned, the court is absolutely powerless to act. The court will be empowered only, under the Constitution, to inquire into the reasonableness of these rates with respect to the particular transactions that have already occurred, with respect to circumstances as they exist at the time, and the courts will not be competent to and they will not assume the jurisdiction unless they modify the rule which the court has itself laid down in the maximum-rate case of deciding whether or not the rate fixed for the future is or is not a reasonable rate.

Mr. ADAMSON. You do not think that an appeal will lie from a legislature to a court?

Mr. BLYTHE. I do not. I think you have stated it very well. If this Congress should attempt to furnish the power that is outlined in this bill, either in this exact form or in some correlative form, I do not think it would be held to be a constitutional exercise of the legislative power.

Mr. ADAMSON. The courts could only construe it back and determine its constitutionality?

Mr. BLYTHE. With reference to conditions as they are at the moment, with reference to the particular case, because——

Mr. ADAMSON. I speak of legislation as to the future.

Mr. BLYTHE. I call attention to the fact that the Federal judiciary has never held any act to be unconstitutional and void except with reference to the facts in the particular case.

Mr. ADAMSON. When you get to a proper point I would like to ask you a question.

Mr. BLYTHE. I was about to say that I believe I have about concluded what I have to say as original matter.

Mr. ADAMSON. In view of what you have said on various phases of the matter, are the geographical or commercial conditions such, or likely to be such, as to lead us ever to hope for anything like uniformity or equality of rates and management through all parts of this Union, even under a Government management?

Mr. BLYTHE. I think a Government management would be the very worst thing that could happen. I believe Government management would mean chaos.

Mr. ADAMSON. Do you think it is possible under any management?

Mr. BLYTHE. I think there will be a gradual approach toward an ideal state, although, of course, it will not reach an ideal state. There will not be perfection in any enterprise that is not an exact science; but there will be an approach to it.

Mr. ADAMSON. Is there not grave danger that under a central management of the Government injustice might be done, whether intentionally or not, to the railroads and cities in one portion of the Union at the expense of the railroads and cities in other portions of the Union?

Mr. BLYTHE. Not only a grave danger, but I believe it is inevitable. There may not, in my opinion, be any remedy for it, but it certainly is unjust on any logical grounds to carry a letter from Washington to San Francisco for the same charge made to carry it from the Raleigh Hotel to the Willard Hotel.

Mr. ADAMSON. And if we should go to the extreme of Government ownership, and the whole subject of railroad management and the army of railroad officials and employees should become an army of partisan conduct, would not that be a very undesirable state of affairs, to say the least?

Mr. BLYTHE. That is a very large political field. My own view is such that no evil can be painted that I think would be an exaggeration of the results of that sort of thing.

The CHAIRMAN. It is difficult to apportion exact justice to all parts of the country, as we see in the river and harbor bill.

Mr. BLYTHE. I think we are substantially agreed on the evils of Government ownership.

Mr. ADAMSON. Supposing Judge Richardson's idea of the gradual approach to a condition where the railroads can be turned over to the Government to be true, I suppose the railroads would be alert to have their stocks in such shape as to turn them over to the Government when the time comes at a liberal price.

Mr. BLYTHE. I think you can say that when the time comes the railroads will get all they can for their property.

Mr. ADAMSON. That is all I wish to ask.

Mr. BLYTHE. If there is nothing further, I will thank the committee for its kindness and attention to me. I am requested to state that Mr. Bird wishes me to call the attention of the committee to the fact that the rates upon export flour from Minneapolis and St. Paul to the seaboard have been adjusted by a recent tariff so as to be the same as upon wheat for export.

Mr. COOMBS. The same a pound?

Mr. BLYTHE. Per unit, per hundred pounds.

Mr. COOMBS. And there is no differential at all?

Mr. BLYTHE. There is no differential as between wheat and flour for export from Minneapolis and St. Paul to the seaboard.

The CHAIRMAN. Is there any other gentleman, Senator Faulkner, whom you wish to be heard this morning?

Mr. FAULKNER. I desire to say that I had anticipated and hoped to have a gentleman here from Chicago to present the question somewhat on the line that Mr. Blythe has presented it, next Friday. He said it would not be possible to get here before then, and I am now somewhat in doubt, from a telegram since received, whether it will be possible for him to be here then, or whether he will be able to come at all. At this time I anticipate he will be able to get here Friday, and I understand that there will be a meeting on Friday.

The CHAIRMAN. There is a delegation which desires to be heard on Friday on another branch of the subject; but the committee can hear the gentleman Senator Faulkner refers to on Saturday.

Mr. FAULKNER. I will communicate with him at once and will notify you, Mr. Chairman, whether or not he will be here. If not, there is no other person at this time that will come before the committee.

The CHAIRMAN. You can let us know on Friday.

Mr. FAULKNER. Very well, sir.

Thereupon (at 11.35 o'clock), the committee adjourned until Friday, May 9, 1902, at 10.30 o'clock a. m.)

---

FRIDAY, *May 9, 1902.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

#### STATEMENT OF MR. JESSE LAWSON.

Mr. LAWSON. Mr. Chairman, we feel that we have a cause to present to you. We would not come, knowing how you are engaged on matters of the greatest importance to this nation, unless we believed that our cause warranted our coming and warranted the taking of your time. We are citizens of this Republic. From the time of the Revolution to the present day no class of people has given its blood more freely for the preservation of this country and its flag than the colored people. In this country we occupy a peculiar position. We are about 9,000,000, one-eighth of the entire population. We have done everything that we could to make ourselves useful and desirable citizens.

To our minds, according to our opportunities and the abilities that we have had, we have done everything to fulfill all of the conditions of civilization; and yet year by year, day by day, prejudice seems

to be growing stronger against us, and we regret to say that our friends seem not to be aware of the fact that we need their hand and their protection. Here in the District of Columbia, on a reservation owned by the United States Government, on the Mall here in this District, within half a mile of the White House, within half a mile of this Capitol, the badge of inferiority is fixed upon certain people coming into this District on this reservation by the railroads bringing in and loading and unloading its passengers. We believe that the sentiment of justice and fair play is still in the bosom of the American people, and we believe that the people not only in the North, but the people in the South, if the case is properly presented to them, and if they can see the injustice of the matter, if they can see what they are doing against American citizens, I believe that even those people will be persuaded to believe that they are in the wrong, and that we ought to have justice accorded to us.

But there is another question, and a very grave one, that presents itself to us just at this time. Please remember, Mr. Chairman, that our friends are in control of this Government. We remember that every branch of the Government, the legislative, the judicial, and the executive, every branch, I say, is controlled by the party known as the friends of the colored people. And yet all of these outrages are permitted against us, every badge of degradation is permitted against us, and no hand is raised and no voice is lifted up to put these things down.

Feeling as we do about the matter, through the kindness of Mr. Morrell, of Philadelphia, we had a bill offered to prevent the separating of passengers upon railroad coaches, and upon the steamboats, on the highways and the water courses on account of race and color. That bill the people are deeply interested in throughout this country.

Petitions have come to you from all parts of the country praying for the passage of that bill, and we believe that under the circumstances and under the laws of this country you have full and ample power to pass such a measure as that to prevent discrimination on account of race and color in public travel. I believe, sir, under the Constitution, it is the first article, section 8, clause 3, where the power of Congress to regulate commerce between the States is prescribed, and under the fourteenth amendment in the first clause, it has power to regulate traffic between the States, and we believe that the interstate commerce act ought to be so amended that the Interstate Commerce Commission should have power to enforce that provision by instituting proceedings at once upon any infraction of the act, and we propose to offer this measure this morning for your consideration. Something else may be put into this, but this is as a basis:

That the rights, privileges, and immunities of passengers traveling on or by any mode of conveyance engaged in interstate communication or commerce, whether on land or water, shall not be abridged or denied the full, untrammelled enjoyment of all the rights, privileges, or immunities or facilities afforded passengers on such conveyances engaged in interstate commerce or communication on account of race, color, or previous condition of servitude of said passenger or passengers, are made the subject of rule, regulation, or instruction to agents or others acting in behalf of any individual or corporation engaged in conveying passengers, whether by land or water, from one State to another; and the rights and privileges of passengers hereunder shall be the same, both inclusive and exclusive.

And every officer or agent of any corporation engaged in interstate commerce or communication shall be entitled to plead this provision and in arrest in bar of any proceedings in any court, taken under color of any law or regulation in conflict here-



with. And any person or persons having a ticket or proffering the regular fare shall be entitled to transportation either by land or water, and shall receive the same treatment, and be afforded identical facilities and accommodations as are furnished or afforded all other passengers of the same class, and without discrimination.

And it shall be the duty of the Interstate Commerce Commission to take the cognizance of and institute proceedings for each and every infraction of all or any of the foregoing provisions, and the party or parties found guilty of the violation thereof shall pay a fine of not less than five hundred dollars, or not to exceed five thousand dollars, and be imprisoned for not less than one year, nor more than six, or both in the discretion of the court.

This we offer for your consideration in amendment of the interstate-commerce law.

Hon. George H. White, who was formerly a member of Congress, will now have something to say in regard to the matter.

### STATEMENT OF HON. GEORGE H. WHITE.

MR. WHITE. Mr. Chairman and gentlemen, I regret exceedingly that an engagement in my office prevented me from being here promptly upon the opening of this session. I do not know the full extent of Mr. Lawson's remarks, but it strikes me that he has covered all the points we intended to present to you.

I am not unmindful of the fact that there is a law now on the statute books that would seem to prevent a discrimination not only in the transportation of commerce where the traffic is between the States or between this and a foreign country, but also in the travel or transfer of passengers going from one State to another; but I take it that most of you gentlemen are lawyers, and if you are not it is a matter of common learning that the Supreme Court has passed upon the existing laws repeatedly, and that as to a matter of this kind now that is res adjudicata that the court has held repeatedly, in several cases, that there shall not be discriminations under existing law where the passenger has a ticket from one State to another, continuous travel; but it has also held in the same decisions that where the railroad or other common carriers furnish accommodations that they may draw the line and have separate cars for the transfer of their passengers, placing colored passengers in one car and the whites in another. And I want to have you understand that we seek no special equality, but we seek simple, unalloyed justice.

It is a matter known to us all, and especially to all of you gentlemen who live or travel in the Southern States, where the bulk of our people live, that this equal accommodation is never granted to us. The cars that are set apart for the colored people, even for first-class travel, in all of the Southern States, and I have been in nearly all of them, are not equal to the second or third-rate smoking-car on other roads. There are carpeted floors, cushioned seats, no smoking, no indecent persons allowed in the first-class cars prepared for the white people. As an offset, we are put into a sort of "jim-crow" arrangement, where the train hands and engineers and brakemen, greasy from their common avocation, when they have to travel are granted the privilege of riding in this colored car, and where smoking and loud, profane, vulgar language is permitted, and that is found on the cars where the most refined ladies and gentlemen of our race have to travel. So that we have not equal accommodation, and the court has held, under existing law, that if that is accorded us we have no right to grumble, and the spirit of the law is complied with.

Why not, you say, then refer to the court for redress on the denial by the railroad corporations, who do not afford this equal accommodation according to the decision of the Supreme Court? I am moved, almost, Mr. Chairman, though this is a serious matter, to repeat a yarn that I heard once of William Loyd Garrison, who was asked once if he was not Garrison and he said he was, and a preacher asked him why he did not go into some place and preach his abolition, and the report was, "Why don't you, then, go to hell and comfort sinners?"

It is a crude illustration, but it is known to us who live there; it is known to me who have been in the courts of the State as a practitioner of the law for twenty-three years, that we have no redress—absolutely no redress—in the courts, where it is a matter between the races, and especially on account of such discriminations we have absolutely no redress in the courts.

Mr. RICHARDSON. What courts have you practiced in in the South?

Mr. WHITE. All the courts of North Carolina for twenty-three years, and in the United States district court of North Carolina, and in the courts of New York, in the courts of the United States, including the Supreme Court of the United States. I speak from a knowledge of my own observation. It is not a matter of theory with me.

And we would ask, therefore, that the interstate commerce law be amended so as to meet this deficiency in the existing law, according to the decision of the Supreme Court, and that is incorporated in the bill which was presented by Mr. Edward Morrell, of Pennsylvania. I have not looked for it, but I presume that it is referred to this committee, Mr. Chairman?

The CHAIRMAN. Yes; it is No. 10793.

Mr. WHITE. I have not the bill before me, but I had a copy in my office and could not find it when I was about to leave.

We ask that the committee shall either recommend or favorably report on that bill, or that you incorporate in your general amendments to the interstate-commerce law such an amendment as will meet this deficiency in the existing law, according to the decision of the Supreme Court. We do not ask for any special favors, we do not ask for any special legislation. We simply ask for that protection which is accorded to every American citizen. If our people are degraded, if they are unclean, if they are boisterous, if they are offensive, the authority is given to all carriers as well as all places of amusement to exclude persons who are offensive to the common public.

And I will state, as a matter of common knowledge, and certainly it is under my knowledge as a matter of common experience, that the average person of the colored people does not want to ride in a first-class car, and he always takes the cheapest fare, and he is not, as a rule, in any way offensive, and does not intrude into cars where either white or colored ladies and gentlemen ride. It is only a few who seek this. There are some who have been educated, have acquired property, and some who are refined in their manners, and they do not wish to be thrust among the outcasts and the vulgar and the objectionable of either their own race or other races. We insist that those of us should have the same class of accommodation as others over the highways and waterways of the country.

I state that we do not desire any discrimination or social equality; we have had enough of that; but we do seek an opportunity to enjoy

the privileges accorded to the public just as other citizens of the United States. It has been said to us that we are not equal to the Indians. I have no fight on the Indians. We are not equal to the Chinese, it is said, or the Filipinos; but there is one thing in which you will agree with me, which is that this country, from its first and earliest dawn, has been developed, controlled, and governed by two sets of men only—white men and black men. That may not be doubted by anybody or gainsaid by anybody. It is true that the negro has not figured very conspicuously other than in its development. We have, as you know, by our efforts—and have done so from the very earliest times to the present day—assisted in developing this country. We have furnished the brawny arms that have developed this country.

It is also known that even though we were liberated from slavery and were fully enfranchised, and were put on a parity with our white neighbors so far as the elective franchise was concerned throughout the South—it has been greatly questioned by some, and I am not here to argue that point, because it does not concern me here, and it is not the proper thing that I should do—but even in that crude condition, even when we had not the development, perhaps, to exercise at all times and intelligently the great responsibilities which came to us, it will be admitted that in all measures tending for the betterment and uplift of the country in the last fifty years the race played a not insignificant part in the measures which have made us the one of the greatest, and perhaps the greatest, nation on the face of the earth.

In the resumption of specie payments, in the advocacy of a sound currency of this country, in the tariff, in the protection of American labor and industries, in the advocacy of all public measures that tended to make this country a great country, the black man, though young in citizenship, has always been loyal and true. He has been accused of identifying himself almost entirely with one political party, and that is perhaps the reason for his present position. The severe way in which he is let alone here of late may break that up a little and change the aspect of that matter in certain sections. But I am not here to prophesy on that.

But we are here to ask that justice be done, and I need not go into detail in this matter. Even when we were slaves, in every warfare that we ever engaged in, the negro has shown himself patriotic and loyal to the flag, as well as to his master or his white neighbor—who was formerly his master—to-day. He is true to the nation; he is loyal to the flag; he is an American. You can call him an African if you will, but we have absorbed this spirit of the nation, and we are as thoroughly and wholly American as any other class of people on this continent. We are loyal because we could not be otherwise. We are an adjustable people. We inherited and absorbed it from the Southern white man, even when we were slaves, and we have proved it, and we have absorbed all that goes to make up a great and noble people, so far as our capacity under the restricted circumstances under which we have been placed would admit.

We have even absorbed your ways and your actions; yes, and absorbed your blood. We are Americans, loyal Americans. We are true to the nation and to the flag, at all times and under all circumstances, and therefore, as a part and parcel, as constituting one-eighth of the population of the country, we think we are entitled to—pardon me for using the expression, but I want to use language

which is not offensive—we think we are entitled to, just as decent, respectable treatment by the carriers of the country on the railroads, steamboats, and otherwise as any others.

This discrimination which is made is not, as I stated a while ago, on account of the condition of the colored people, so much as a badge of caste, of degradation, of humiliation. Why, here when I was in Congress, in the Fifty-sixth Congress, the legislature of my State in passing a bill then to place these separate cars, or as they are commonly known “jim-crow cars” on the railroads of North Carolina, a thing never undertaken before, stated plainly that the nurse or the servant, however illiterate, however wanting in the development along civilized lines, was not objectionable to ride in the first-class cars, riding with the mistress or the master. But it was negroes like the famous Bishop J. W. Head, one of the most famous evangelists in the country; men like Col. James H. Young, and last, so they said, George H. White, of whom they said, “That is the class of persons we want to reach by the jim-crow car and bring them down to their place.”

Now, I think that my place is not to thrust myself forward in with white gentlemen. If I want you in my home, I will invite you, and if you want me, you will invite me, and unless I am bidden I will not come; and that is the sentiment of the average negro, and certainly that of the intelligent negro, of this country. But when you come down to a common car of a carrier that is such, and kept in such condition as those I speak of, and when I have to go in that car, and my wife—an educated woman, who feels just as your wife feels, who enjoys beauty as your wife enjoys it, who enjoys pleasure just as she does, who feels keenly an insult, or anything that tends to degrade her, and so do I—and I am forced to place her in such a position as that, we feel that such a condition is not just. We do not feel that we ought to be degraded by being thrust off in some little end of the car, where the riffraff of all races are loaded in, and where, aside from all the discomfort, a lady is likely to be insulted, and if we try to go into any other car we are likely to be kicked out——

Mr. RICHARDSON. Would you object to separate, equal accommodations?

Mr. WHITE. If the separate, equal accommodation was for no other purpose than for the carrying out of the letter of the law, and not for the purpose of my degradation; no, sir.

Mr. RICHARDSON. The question is “separate and equal accommodations”—where you pay a dollar and the white man pays a dollar, and you have separate accommodations, and are just as well provided for, and as comfortable in every respect.

Mr. WHITE. That we will never get.

Mr. RICHARDSON. Would you object to that?

Mr. WHITE. I feel that when I get on a railroad train, and I have business with you, or you with me, and I have a first-class ticket and you have one, that I ought to be permitted, if I had occasions to, as I had a short time ago, to come and sit down with you, or you with me, if you desired to do so, and continue to talk that matter over without any law.

Mr. RICHARDSON. You would apply the same principle to the hotels?

Mr. WHITE. No, sir.

Mr. RICHARDSON. Why?

Mr. WHITE. I never seek accommodations in the hotels, and I do not think you can point out a place where we have ever thrust ourselves forward—

Mr. RICHARDSON. The hotels are public matters, just as the railroads, both of them—

Mr. WHITE. They are public matters, but not in the same way. There are hotels where we can be accommodated by our own people, but we have no railroad cars and no steamboats, and we have to use yours.

Mr. RICHARDSON. Then you object to the separate accommodations just simply because it is a race discrimination?

Mr. WHITE. I would object to it, not because it is a race discrimination, but because it is intended—because it is meant to make me feel my inferiority, and to degrade me, whatever my qualifications.

Mr. RICHARDSON. Do you not know that on many of the railroads where these separate cars are used no white man is allowed to go into the cars set aside for the negroes?

Mr. WHITE. That is the law in a great many of the States, and it is violated every day so far as the white man is concerned, but never allowed to be violated where the colored man is concerned.

Mr. RICHARDSON. What part of the country do you refer to?

Mr. WHITE. I have been in South Carolina and Georgia; I have been in those two States.

Mr. RICHARDSON. I have been on some of the most extensive railroad systems in the South, and where a white man was not allowed to go into those colored coaches. I have been stopped myself, when I started to go in by accident, from going into the car. I was told that I could not go there, that that was set aside for colored people. I know that that is so on the Southern Railway.

Mr. WHITE. Yes; and I have ridden on the Southern Railway, from here to Wilmington, and to Atlanta, and I have found on the Southern Railway that an engineer greased from head to foot, or a coal heaver, or a brakeman, or any other employee, would come into that car, even though my wife, a decent lady, well dressed, was sitting there, and I have seen them take their drink of whisky right there in the presence of my wife.

Mr. RICHARDSON. I do not think that any fair-minded man would indorse that. I believe when a man pays a dollar he ought to get a dollar's worth of ride on the road.

Mr. WHITE. Yes, sir.

Mr. RICHARDSON. Still I believe in separate accommodations.

Mr. WHITE. I have stated in answer to your question what I have seen.

Mr. RICHARDSON. I think that is the spirit, and that is being done on the railroad I am speaking of, because I know I have seen it often and over again on the Southern Railway, that is, to exclude white men and white women from the colored coaches.

Mr. WHITE. In the State of South Carolina the statute is to exclude the white persons from the colored cars and the colored people from the white cars, and that is partially done; that is done in a measure. As I started to remark a while ago, I was coming down from Biddle University last June—I am an official of that university—and Dr. Satterfield was coming from Charlotte, N. C., to Concord, and he wanted me to stop at Concord and talk over with him in the interim some

matters of importance, and I wanted to talk over with him some matters, and I did not dare go in the car and talk with him, and he did not dare come in the car and talk with me, and we had to compromise by standing on the platform and talking until we got to Charlotte.

You might take one more illustration. I was Commonwealth's attorney in North Carolina, and after my term expired, when I was in Congress, I have met constituents—and I am glad to say, and say it with pleasure, that the Democrats and Republicans all came to me for what they wanted, irrespective of their party, and I made absolutely no distinction when I was in Congress, but tried to accommodate their wishes—I have had white Democrats and white Republicans get into a conversation with me at a station, and desire to continue that conversation, and I was not permitted after I got on the train to continue the conversation, but had to abandon it. I could mention these instances by the hundred. I do not advance this as the primary reason why we insist upon this equal accommodation and in the same car, but I insist upon it because the purpose and intent of the exclusion everywhere I have ever traveled in the South—and I was born and brought up in the South and never have lived anywhere else—the purpose of it was to degrade, to humiliate, to make me feel my inferiority.

Mr. RICHARDSON. Right there, from an intelligent standpoint, and that is the only way I am presenting it to you, or wish to discuss it at all, how is it and how have you conceived it to be a matter of degradation when equal accommodations are provided for your race as are provided for the white race? How can it humiliate you when you are simply associating with your own race?

Mr. WHITE. I never object to associating with my own race.

Mr. RICHARDSON. How can it humiliate you?

Mr. WHITE. It can, under the very terms of the statute, and the reasons I have given to you. I may live in a community and may have a white man employed as a hand on my farm, a poor white man living in one of my tenement houses, and yet when we go to the station he gets into a first-class car, and nine times out of ten—you speak of it as the exception, but the rule is—I have to go into one where there is smoking, and where I meet all these conditions which I speak of, but he goes into the other cars, and he feels that he is my superior, and he feels a degree of hatred for me, and he feels that I am not even fit to work with him, and it brings about a spirit and a feeling between common American citizens that ought not to exist in a free republic.

Mr. WANGER. To what extent are these cars used in interstate travel?

Mr. WHITE. They are used universally, so far as I know, except that now and then there are some of these fast mail trains from here to Tampa, Fla., and farther south, where the cars make only one or two stops in a State, and then I believe they carry only one day coach. Those are usually vestibule cars on those trains, and in the day coach, where there is no discrimination, I have been told by others that in cases like that they make no exceptions except in coming up from Charlotte and Atlanta, Ga.; those are the only places. I know you can not ride in a Pullman car in Georgia unless you come in from some other State, and they provide nothing else equivalent to it. You can not get into a Pullman car.

Mr. WAGNER. Is that under a law of the State?

Mr. WHITE. Yes, sir; in Georgia. You can not get on a Pullman car in Georgia, even going to Washington City.

Mr. RICHARDSON. I traveled there not long since, and I will give you an instance of my own experience on this same railroad. I saw two colored men in one of those cars.

Mr. WHITE. They must have gotten on before they came to the State of Georgia. A man can get on and go through the State of Georgia, but you can not get on in the State of Georgia, because I have tried it; I tried it last June——

Mr. RICHARDSON. If they——

Mr. WHITE. If you came into the State on that car, I do not think they would put you off, but I tried it in Savannah last June, and could not get onto one of those cars.

Mr. COOMBS. Will they allow you to get on to go out of the State?

Mr. WHITE. No, sir; not on a Pullman car anywhere in the State, and they provide nothing equivalent to the Pullman car. No one here will argue that an ordinary day coach is equal to a Pullman car, and you can not get on a Pullman or a Wagner car, no matter where your destination is. It was after 12 o'clock at night when I got on at Savannah, and I insisted I was tired and wanted to go to bed, wanted to lie down, and they would not allow me to get on the car until we crossed into South Carolina, nearly 3 o'clock in the morning, and I had to get into a day coach and stay there until I got out of the State of Georgia, and my destination was Washington, and my ticket was for Washington City.

Mr. WANGER. You say white people are not allowed to enter the cars set apart for colored people in the State of South Carolina?

Mr. WHITE. That is the law, but it is violated every day. No colored man, unless he goes in the capacity of a nurse or a servant, can get into a car occupied by white people and ride for a half a mile without being put out.

Mr. RICHARDSON. Well, you can make complaint to the Federal courts.

Mr. WHITE. Yes, we have made complaints.

Mr. RICHARDSON. You got justice, did you not?

Mr. WHITE. No, sir. Every man on that case was born and reared there, and there is no difference between——

Mr. RICHARDSON. Then you are practically excluded from justice in the Federal courts as well as in the State courts?

Mr. WHITE. In my opinion the juries are about the same as the judges.

Mr. RICHARDSON. How about the judges?

Mr. WHITE. The judges are just the same.

Mr. RICHARDSON. The Federal judges are the same?

Mr. WHITE. Yes, sir; they are Southern men, with all the feelings of those in the State courts.

Mr. RICHARDSON. This is for information that I am asking you. You say you have practiced for many years in the Southern courts. I believe you said in the South Carolina courts?

Mr. WHITE. Yes, sir; only in the Southern States.

Mr. RICHARDSON. I am speaking of the Southern States.

Mr. WHITE. I have practiced limitedly in Virginia. For instance, when I was Commonwealth's attorney I had occasion to go over into Virginia to take depositions, and I know something of the practice of

the State, but I never was a member of the bar there. I practiced continuously in the State of North Carolina for twenty-four years.

Mr. RICHARDSON. And I suppose you never heard of negroes being jurors in your practice?

Mr. WHITE. Certainly. There are jurors to-day in the South—negro jurors. I have tried cases with one-half or two-thirds of the jurors negroes.

Mr. RICHARDSON. You found the negro on the jury generally went for conviction?

Mr. WHITE. I never found that so. I found him usually a pretty fair-minded man.

Mr. RICHARDSON. They are usually very much afraid of them in the Alabama courts.

Mr. WHITE. I would be afraid of the courts entirely in Alabama. I have been there.

Mr. RICHARDSON. And particularly in the trial of people of their own color.

Mr. WHITE. Perhaps so, but I have found juries about the same, whether white or black. These colored men have absorbed the American idea, and do about as other jurors do.

Mr. RICHARDSON. Do you not know it is a fact that is accepted by almost all people who are informed, that you take a negro in the South, when he is charged with some indictable offense, that his direct preference is to be tried either by former slave owners or the descendants of slave owners?

Mr. WHITE. No, sir; I do not know that, and never have observed it as practice or common information.

Unless there is some question I would be glad if the committee would hear from Rev. Walter H. Brooks for a few minutes.

#### STATEMENT OF REV. WALTER H. BROOKS.

Mr. BROOKS. There are just a few things that I would like to say with reference to this matter. I, of course, have traveled a little in Virginia and through the South, and lived in Virginia. I was made free by the emancipation proclamation, and I think I know what are the prevailing customs in the South so far as the "jim-crow" system is concerned. I am opposed to the "jim-crow" car because as a rule it is an off-cast or old stock coach, and part of it is used for baggage, or as a smoker for both white and black people; and that is on the Southern Railroad. The coach in the front part has a little apartment for colored smokers, in the center your colored ladies and gentlemen are seated, and in the third part of the car, in the back end, the white smokers are seated. That is the colored first-class car. It is nothing but an old smoker.

We have been ejected from the coach in which we used to ride and put right in the smoker. That is all we have for first-class pay. That is a downright swindle—a downright swindle. If I paid second-class fare for that second-class trip I would have no right to object; but that is the practice of the Southern Railroad system that goes out of Washington. I have traveled, and speak that I do know, and testify to that I have seen. I took my daughter, a teacher in the public schools of this city, and had to thrust her into just a condition of that kind last year when she went from this city, and she had to take that car in



the District of Columbia, or else take another car in the District of Columbia, and as soon as she reached the border line, and crossed the border, to be asked out of that car in which she was and then to get into the "jim-crow" car.

This coach in which we ride is always nearest to the engine of all the passenger coaches, so that in case of any serious accident the black man, who is the best prepared to meet his God, will be the first to reach heaven, or if he survives the last to extricate himself from the débris of the wreck.

Mr. RICHARDSON. Do you think they put him there for the purpose of having him killed?

Mr. BROOKS. For the purpose that if anybody is killed that he shall be the man. That is certainly the intent; it is not an accident.

Mr. RICHARDSON. The sleepers are frequently on the rear.

Mr. BROOKS. The sleeper is in the most protected part of the train. The man farthest from the engine, which is the safest place, is the best off, because he can see the danger and jump, but the men who are in the mail coaches, the men who are in the baggage cars, the smokers, the first-class cars, are the most exposed, and we pay the same fare, and can not help ourselves. That is not just; that is all about it.

Moreover, the colored citizen has to buy the same ticket and he pays the same fare as his white neighbor and often fails to secure like accommodations as a through passenger. For instance, I went to Warrentown, Va.; I took a car, and traveling in Virginia I had to travel in the "jim-crow" car, but my white friends on leaving this city went through on a through coach. I changed at Manassas and I could not stay in that car, and I saw my white friends who went from this city pass through from one track to another, and they did not have to leave the car at all. I say that is unjust. I paid the same fare as other people paid, but did not get the same accommodations. Now, you talk about facts; these are facts taking place right here in the District of Columbia, and on the Southern Railway that goes out of this city. That is not equal accommodation by any means. Now, if there is any remedy anywhere we ought to have it.

Then, too, it must be remembered that this is a separation in travel, not of two races. It is supposed to be a separation of two races. No; it is a separation of the colored people from the rest of the traveling public. The Indians, Chinese, white people, and the rest of the American population who travel go into what is called on the sign "For white people." Indians, Chinese, white people, and the rest of the American public travel under that sign, in the coach that bears the sign, "For white people." The man with a black face must go into the other car. "That is your place." That is what we are told.

Now, this is not just. If the rest were separated; if the Chinese, who are colored people; if the Indians, who are colored—you are white, but the Indian is not a white man; the Chinese is a colored man; all the rest of the races are colored folks.

Mr. STEWART. Is not that a misnomer? Black is the absence of all color. Is not the black race rather to be termed the "colorless" race?

Mr. BROOKS. No; not since we came here. Not in America. We were in Africa, but not in America. In America we are mixed. That is not just. That shows that the whole spirit of the thing is to degrade me, to degrade my people.

Then another thing; there are convicts and their guards to be shipped from place to place. Do they travel in white cars? They are of your people, and of my people, but they are put into our coaches because our coaches are the degradation coaches. They are the coaches for the filth and the scum class. They dump all of that class into our coaches.

Mr. COOMBS. What do you want?

Mr. BROOKS. Justice.

Mr. COOMBS. That is an abstract idea—justice; but with reference to the law, what remedy would you suggest?

Mr. BROOKS. I would say accord to the people what they pay for and do not compel me to travel in a coach with a convict because my skin is black.

Mr. WHITE. Pardon me a moment. We seek a redress couched in language which makes that an offense against the Federal law for the common carrier, the railroad, to make a discrimination even on account of race, color, or previous condition of servitude.

Mr. BROOKS. Nothing will suit this country better than simple justice. We number 8,000,000 of the people of the United States. Now, whatever degrades us in the long run is going to degrade you. I repeat, it. Whatever degrades us in the long run is going to degrade you. The reason the South is not more prosperous to-day is that they spend too much time holding us down, and if two men are on the ground, one man may be on top, but they are both down, and there is too much time spent trying to hold us down.

I ask you, in the name of justice, in the name of God, to be fair, to do the fair thing. If I was not satisfied that injustice could not stand, I would not ask you. I am satisfied that nothing that is wrong will stand.

On the Pennsylvania system it is a little better going out of that State than Richmond. They actually give us a part of the white man's car. They have four seats with a plank partition between us and the white people; but mark you, we can not go into our end of the car by passing through the other end of the car, but the white people can pass through our end of the car to get into theirs. And where there are very crowded conditions they will never put passengers into the next coach. That is a violation of the law. But I have seen it done in this way. When there is a little portion of the smoker the center of which is for colored ladies and one end for colored smokers and white smokers at the other, they will take your colored lady and say "You are standing; come here into this white portion of the car," and they will put that woman in there among white smokers. They will never put her into the car where there are ladies and gentleman traveling of the white race, where there is not any smoking.

Now, our friend here asked "What is your objection to the same accommodation?" Somebody asks "Why is a living fish heavier than a dead fish?" First you have to prove that to be so, and the first thing for you to find is to find the equal accommodations. I have not found the like accommodations. When the time comes, as it will, when we will build coaches and own railroads ourselves, we will have equal accommodation, just as we have as good churches, because we are building them and owning them, and we are not going to get the fair thing at your hands unless you try and try hard; and now I appeal to you in the name of justice. No nation can succeed by doing wrong. There is a God in heaven, and He reckons with nations as He reckons

with individuals. He has reckoned with the American people once, and He will reckon with them again if they do not do justice by them and everybody else.

Now, we appeal to you gentlemen for the remedy.

### STATEMENT OF MR. CYRUS FIELDS ADAMS.

Mr. ADAMS. I am opposed to the jim-crow law, because I believe it is contrary to the spirit of the American institutions. We claim that this is a free country, a country in which all citizens are free and equal, and for that reason I think that all citizens should be treated alike on the common carriers of the country. I claim, gentlemen, that a republic has absolutely no right to discriminate between its citizens. We are either slaves or citizens. Many years ago it was said that the country could not exist half slave and half free. The chains have been taken from the limbs of the negro and the mixed-blooded people of this country, but they are not yet free. They have been declared free, but they are not yet free, and will not be free until they are allowed to enjoy all the privileges, all the rights, and immunities of other citizens.

Mr. White, in speaking of the law in Georgia, called your attention to the discrimination there, but there was one point that he omitted, and that was this: The Georgia law required separate cars. The separate cars are furnished, but they are not equal. Now, in order to compel negroes and mixed-blooded people to go into those separate cars, to go into those cars where they are degraded, they have passed another law in Georgia which forbids the selling of tickets on a Pullman car, so that there is no way to evade it in that particular State. In some of the other States the person who does not wish to travel in a jim-crow car can buy a Pullman ticket, but that is prevented in the State of Georgia.

Another thing. One of the gentlemen spoke of the number of the colored people in this country. The census shows that there are about 9,000,000, but you gentlemen know that that is very wide of the mark. There are not less than twenty-five or thirty million colored people in the United States. That may be an astounding statement, but it is a fact.

Mr. RICHARDSON. Where do you get that information from?

Mr. ADAMS. From knowledge of conditions that I have in the South. We know that the people in the South have so mixed up, the blood is so badly mixed there that it is pretty hard to tell who is white and who is colored, and if you doubt it just gaze on me.

Mr. WANGER. How are you enumerated in the census?

Mr. ADAMS. Well, they are enumerated as negroes in this last census, but it is claimed that there are only about 9,000,000 negroes in this country. That is not true. It is absolutely untrue. From the best information we have, there are not more than 2,000,000. I think Bishop Grant in his book estimates that there are about two or three million negroes in the country. Even my friend Mr. Brooks there, who is a dark man, has some white blood in him, and many of the men whom you meet in the streets who are darker than he is have some white blood.

Mr. WANGER. How do you account for the fact that the enumerators make such a mistake as that?

Mr. ADAMS. Because of the conditions in the South. It is a great insult for a man to ask a white man in the South if he is a white man, and suppose a white man, if he is white, and the census enumerators were to dare to make such an inquiry of him—they would not dare to ask such a question of a white man.

Mr. COOMBS. I do not understand your statement. You say they are not enumerated under the head of blacks?

Mr. ADAMS. They are all enumerated as negroes.

Mr. COOMBS. Yes. Now, if that is true, and the enumeration shows but 9,000,000, how can you say that there are from 29,000,000 to 30,000,000 negroes in the United States?

Mr. ADAMS. That is an estimate. I think there are that many because there are—many of the best families in the South are of mixed blood, and they are called white people. Senator Tillman admits it, and certainly the race has no worse enemy in the country than he. He admits that the mixture is so great that it is impossible to distinguish in many cases. When the question was discussed in the constitutional convention of South Carolina they declared that a person having less than one-eighth negro blood was a white man. They wanted to make it a little stronger than that—some people did—but Senator Tillman said that would not do. If they made it any stronger than that, one man said, it would hit 400 families in his district who claimed to be white people.

Mr. RICHARDSON. Do you claim that anywhere in the South a man who has negro blood in him is classed as a white man?

Mr. ADAMS. Yes, sir.

Mr. RICHARDSON. Whereabouts?

Mr. ADAMS. Thousands of places in the South.

Mr. RICHARDSON. Name one place.

Mr. ADAMS. I do not need to name—

Mr. LAWSON. Ex-Senator Gibson and Judah P. Benjamin were instances of that.

Mr. ADAMS. Alexander Hamilton, the man who founded the Treasury, had negro blood.

Mr. LAWSON. Ex-Senator Gibson said:

If you take it through Louisiana, I could buy for a dollar and a half gumbo enough to feed all the people of pure blood in Louisiana.

That was his statement.

Mr. ADAMS. And there can be no doubt in the minds of our people who are investigating the matter; and we find that many of the most illustrious names in this country have come from the fact that they have negro blood in their veins; and if they were on earth to-day Alexander Hamilton would be compelled to ride in a jim crow car, if they knew it. I have traveled in the South, and if they had known I was a negro they would have pushed me into those cars.

Mr. RICHARDSON. What quantity of negro blood did Alexander Hamilton have?

Mr. ADAMS. Probably a very small portion; one-sixteenth perhaps.

Mr. STEWART. The coloring of the negro indicates Caucasian blood. Now, then, by what deduction of reasoning can you say that the lightness of the man shows the negro blood in his veins; how does the lightness of Alexander Hamilton evidence his negro blood?

Mr. ADAMS. We looked up his history and found that his grandmother was of mixed blood, and was so known and recognized in the

island where he was born. Mr. Nevis here has looked up the matter and has the data.

Mr. TOMPKINS. You are not compelled to ride on jim-crow cars?

Mr. ADAMS. They look at me and are afraid that they might insult a pure white man by asking me, and they would not dare to do such a thing as that.

Mr. LAWSON. I could give you an instance of a woman who was practically perfectly white, and when she attempted to ride, they took her out, baggage and all, and thrust her into the other car.

Mr. TOMPKINS. The reason I ask is that you are very light. When a man bears the mark of the white man as you do, he is not compelled to ride in the jim-crow cars?

Mr. ADAMS. No, sir; when a man is as white as I am, as a rule, he is not necessarily compelled to go in the jim-crow car.

Mr. STEWART. When you were questioned by the census enumerators, was that question put to you?

Mr. ADAMS. No, sir.

Mr. STEWART. Whether you were a negro or a pure white?

Mr. ADAMS. No, sir.

Mr. STEWART. Then you were enumerated as a white person?

Mr. ADAMS. No, sir.

Mr. STEWART. How do you know?

Mr. ADAMS. Because I gave it in myself.

Mr. RICHARDSON. Have you ever been mistaken for a white person in the South?

Mr. ADAMS. I have been taken for a white man; yes, sir.

Mr. RICHARDSON. You have been mistaken for a white man, have you?

Mr. ADAMS. Yes, sir.

Mr. WANGER. Yes, are generally presumed to be so?

Mr. ADAMS. Yes, sir.

Mr. WANGER. Where you are not known?

Mr. ADAMS. Yes, sir; that is the point. While I might not be disturbed, still my friends here who happen to be a little darker, who happen to have a little more of negro blood, would be; but they are gentlemen of responsibility and gentlemen of property and gentlemen of intelligence, and they are gentlemen of culture and refinement, and they are entitled to the same rights and privileges as I get and you get, gentlemen, or anyone else gets.

Mr. BROOKS. I have a friend who is a minister, and he and his wife came to Washington and traveled from their old home in Virginia. They attempted to put his wife in a jim-crow car and insisted that the husband should go into the white car. He was fairer than my friend here, and the woman was of an Indian color; but both of them were colored people.

Mr. ADAMS. This is a very serious question. When I look around and see the very many shapes and forms in which the race is confronted with these difficulties on the steamboats and railways and in the hotels and everywhere else in this country, which is claimed to be a free country, the more I am convinced that this is a very serious question for us to consider, for you to consider, gentlemen, and to the interests of the nation. The question occurs to me, Is not this but the beginning of the dissolution of this nation; when we see that

American citizens are denied their rights, the simple rights as citizens, is it not the beginning of the death of this nation, the dissolution?

Nations do not live forever. History shows in the past that they come up—they are born—pass through youth, maturity, and old age, and back to dissolution; and I say that this is a serious question, because I believe that unless this question is settled and settled rightly, settled on the lines of justice to all men without regard to race or to color, that this is but the beginning of the dissolution of the nation, and that in not many years. Years in the life of a nation are centuries. I do not mean to say that this nation will pass away in a few years, but unless this question is settled right, in less than one hundred years or so this nation will cease to exist.

Mr. LAWSON. Thanking you, gentlemen, I wish to say with regard to the amendment just one word, and then I am through. We offer an amendment to the interstate-commerce law, and in that amendment we insist not only upon an equivalent of right, equal accommodation, but we insist upon identical accommodations and identical rights as American citizens, as soldiers, as everyone appertaining to the honor and glory of this country, we think that we ought to have it. I hope that you gentlemen will look into it and will bear that in mind.

Then we insist upon it for this reason: You have in Mississippi what is known in voting as the understanding clause. A man must either read or write or own property or understand what is proposed to him. They have one line of questions for the colored and one line for the whites. They ask the white man how much are two and two, and he will say four. They may give the colored man something in calculus, something that will involve a series in trigonometry or in logarithms, so that if he knew how to evolve the series of logarithms it would take several days, so that he can not possibly complete the process within the time which he has to vote. So that one man may get a vote in in Mississippi, but it may take him all day, according to the understanding clause. So that if you put it down as equal accommodation, the accommodation that is said to be equal will never be equal, and they never will get it.

The only way that we can get equal accommodation is to have the same thing, just as you have in this country one money for the black man and for the white man. If you had a silver dollar for the black man and free coinage of silver, you would give him that silver dollar under the free coinage of silver. And so the only chance for the black man to have equivalent accommodations is to have the identical same thing as the white man has. He has the identical money now, the identical greenback and gold dollar, and everything in that way, and if we do not have the identical thing in the way of accommodations, we will never get an equivalent.

Mr. RICHARDSON. Do you not know that the Supreme Court of the United States has passed upon the constitution of Mississippi and pronounced it constitutional?

Mr. LAWSON. No, sir. I know that it has passed upon a certain phase, which was not upon the merits of the case, in the Williams case but as to the constitution of Mississippi, as to the essence of the constitution of Mississippi, the Supreme Court has never passed upon that. But the Supreme Court will pretty soon have a chance to pass upon that, in Louisiana and Alabama, and all the rest of the States,

for we have cases going through the courts of Mississippi and Alabama which will bring the matter before the Supreme Court on its merits.

On the jim-crow law the supreme court has only passed upon something which the State court had made a law, and there was no Federal legislation respecting it; and I believe that the Supreme Court has always held that where the Federal court has had jurisdiction, where the Federal Government has had jurisdiction, and the State legislature has also had jurisdiction, that each may legislate for it, and in the absence of any Federal legislation the State law will control; but if Congress has jurisdiction over that subject-matter under the Constitution, then the laws of Congress supersede all the laws of the State. I think that is the doctrine of the Supreme Court as always held.

Now, having that in view, that is why we want Congress to legislate. Congress has not legislated, and if there is not the right under the interstate-commerce law, by the first article of the Constitution, or under the fourteenth amendment to the Constitution, there is that right, and having that right we want the Congress to put it in there so that it will not be mistaken.

And then again, we want Congress to put it in there fixing the penalties, so that the juries down there may not award 1 cent damages and put a man to enormous expense and more inconvenience than he had before and still he get nothing out of it, so as to discourage us in bringing actions. And we ask this of the Republican Congress—of the Republican Congress that has put everything in the Constitution that has been for our people. We ask that of them, and we expect them to do it.

The people all through this country are thoroughly aroused on this matter, as will be shown by the petitions presented to this House from all over the country, and we hope that there will be no mistake, and when this measure comes up and when this measure has gone through Congress there can be no mistaking its meaning in any way, shape, manner, or form. And we ask it and expect it, and I believe that we have a right to expect it of you gentlemen.

Mr. ADAMS. Gentlemen, I want to say before leaving that we are not willing to accept any bill that speaks of separate and equal accommodations. We do not want separate accommodations. We want the same kind of accommodations that all other American citizens get.

Thanking you, gentlemen, for your attention, that is all I desire to say.

(Thereupon, at 11.45 a. m., the committee adjourned until Monday, May 19, 1902, at 10.30 o'clock a. m.)











**H. T. NEWCOMB,**

**LAWYER**

**BOND BUILDING.**

**WASHINGTON, - D. C.**







